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# HISTORY

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# BRITISH EMPIRE,

FROM THE ACCESSION OF

CHARLES I. TO THE RESTORATION;

WITH AN INTRODUCTION,

TRACING THE PROGRESS OF SOCIETY, AND OF THE CONSTITUTION, FROM THE FEUDAL TIMES TO THE OPENING OF THE HISTORY;

AND INCLUDING A

PARTICULAR EXAMINATION OF MR. HUME'S STATEMENTS

RELATIVE TO THE

CHARACTER OF THE ENGLISH GOVERNMENT.

GEORGE BRODIE, ESQ.

ADVOCATE.

IN FOUR VOLUMES.

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# PREFACE.

From the celebrity of Mr. Hume's Work, it may be thought to have been equally presumptuous and hopeless to enter the field which he is supposed to have so fully preoccupied. The portion of British History, however, embraced by the following volumes, is so important—the picture there presented so different from the one drawn by that elegant writer, that, if it shall be found to be sufficiently supported by authority, I flatter myself that I shall be absolved from the charge of either presumption or rashness.

For the task of an historian, Mr. Hume was, in many respects, most eminently qualified; but, having embarked in his undertaking with a pre-disposition unfavourable to a

calm inquiry after truth, and being impatient of that unwearied research which,—never satisfied while any source of information remains unexplored, or probability not duly weighed,—with unremitting industry sifts and collates authorities, he allowed his narrative to be directed by his predilections, and overlooked the materials from which it ought to have been constructed. Many documents of essential consequence have, since his time, enriched the public stock; but it may appear, from the following pages, that he either did not avail himself, or make the proper use, of those open to his inspection. From the short period, indeed, devoted by him to that portion of British History, I conceive it to have been morally impossible for him to have become master of the necessary materials.

The Work which I now submit to the Public has occupied my leisure hours for many years; and though, to my regret, I perceive that in some respects, particularly in certain expressions which had escaped me, it might still be improved, I trust that it will be found deficient neither in research nor ac-

curacy. Not contented with merely glancing through, or dipping into, the numerous publications referred to, I have, by a collation of the various parts, endeavoured to ascertain the truth. The manuscripts relative to my subject,—whether in the Advocates' Library at Edinburgh, the British Museum, the Archbishop of Canterbury's Library, at Lambeth, (and here I must acknowledge my obligations to Mr. Todd for his kind attention,) or the Bodleian Library,—I have carefully examined. From a manuscript copy of Baillie's Letters shewn to me by my valuable friend, Dr. M'Crie, I have, to illustrate my text, extracted some passages which the Editors have omitted to publish.

As it is impossible to understand events, without a thorough knowledge of all the circumstances out of which they emerged; and as Mr. Hume's view of the government, and of public opinion,—on which is founded his defence of the unfortunate Charles I. and his minister Strafforde,—appears to me altogether erroneous, I have devoted a whole volume to introduction. From the variety and import-

ance of the matter which it contains. I believe that, as it was not the least difficult part of my undertaking, that volume will be regarded as not the least valuable. On religion—a subject on which the celebrated historian alluded to seems to me no less unhappy than in his ideas of the government—I have been particularly copious. Endeavouring to keep steadily in view the principles of toleration, I have yet made it my study to present such a faithful picture of the sentiments of the times, as may enable the reader to form a just estimate of transactions which flowed from a more contracted policy. In recording civil events, it has ever been my object to abstain from all unnecessary indulgence in abstract speculations, and to appreciate men and things, in relation to the state of the government, of society, and of public opinion, as the only standard by which they ought to be tried.

# HISTORY

OF THE

# BRITISH EMPIRE.

## INTRODUCTION

## CHAP. I.

*Containing a History of the English Constitution, and tracing the Progress of Society in England, from the Feudal times till the close of the Reign of Elizabeth.*

THOUGH the fundamental principles of the English Constitution were laid at a very early period, and have been traced back by ingenious men even to the woods of Germany, its benefits were long restricted to a small portion of the community. It requires no uncommon share of sagacity to discover that, if the land of a country be appropriated by a few, and the many have no manufactures to exchange for the produce of the soil, the lot of the latter must, under any form of government, be slavery and wretchedness. Without an equivalent

to purchase the means of subsistence, they have only the melancholy alternative of starving, or of submitting to the conditions which the owners of the soil choose to impose. Such was the feudal system, under which every large estate was a petty principality, with one absolute lord, whose vast number of dependents, while they constituted his pride and boast, as well as the foundation of his power, were only retained on the condition of implicit obedience. Besides that they were subject to his jurisdiction, it is quite evident that no laws could have enabled them to resist oppression, since the very attempt to obtain relief would have been punished, as an inexpiable act of mutiny, by banishment from the estate—an evil worse than death itself, since the wretched outcast would have found himself at once destitute of an asylum, and of every resource. For most estates would be overburthened with inhabitants, and proprietors would, in the general case, deny him refuge, even when it was in their power to grant it —either from a feeling of resentment and wounded pride at the boldness of a dependent that could question the authority of his chief, or through fear of offending a powerful neighbour, or of encouraging insubordination in their own followers by the example. Even the friends of the outcast would, to avoid his fate, be obliged to smother their feelings, to deny him assistance, and to applaud, as the award of justice, the terrible vengeance that had descended upon their kinsman. Thus, under the feudal system, though the Barons vindicated their own

rights from the encroachments of the royal prerogative, the bulk of the people were strangers to liberty; but, as the population emancipated itself, it came within the pale of laws originally enacted for the benefit of a particular class.

The feudal system was gradually subverted by the rise of towns, where the inhabitants, enjoying security in their persons and property, and subject to regulations of their own enacting, successfully cultivated the arts, and accumulated capital. Fortunately for future ages, the Barons were disposed "to barter their power for trinkets and baubles *," and, according to the progress of refinement, dismissed part of their retainers that, with the produce which these had been accustomed to consume, they might gratify their growing taste for manufactures and foreign commodities. Towns, where a part of the former retainers of the aristocracy procured employment, flourishing in arts and all the literature of the age, attracted the great landed proprietors themselves, who, brought into competition in a new sphere, contended for superiority, by a display of the elegancies and luxuries of life. This new emulation obliged them to diminish the number of their adherents, that they might have the means of expenditure, while it enriched the mercantile and manufacturing classes—who, likewise aiming at distinction by the only course within their reach, again stimulated the aristocracy to farther expence for the purpose of preserving their distance from

* Smith's Wealth of Nations, vol. ii. p. 192, 195.

ranks whom their habits taught them to despise Thus the revolution in manners daily acquired accelerated motion.

The aristocracy were naturally both hated and dreaded by the monarch, as frustrating his ambition and controlling the regal authority; but baronial power being likewise injurious and dangerous to the peace and safety of the other independent ranks, it was their interest to assist the Crown in reducing their common enemies under subjection to laws devised for the general good. Hence sprung the attachment of the people to the throne, and as it proceeded from a motive that must invariably actuate mankind,—the desire of security for their persons and property—it is strange, indeed, that certain writers should have inferred from it that the people had imbibed the principles of passive obedience. Attached as they were to monarchy, they never compromised the principles of constitutional freedom, and the monarch himself appears to have been fully aware of the ground on which he was entitled to their support. Thus Henry III. in order to gain the affections of the commons, when he was driven to extremities by the Barons, published a proclamation, in which he assured the people of his readiness to protect them against the great Lords *; and Bacon, with a view to promote the popularity of Elizabeth's reign, makes it the boast of the English Government, that

* Cotton's Short View of the long reign of Henry III. The proclamation is partly quoted. P. 27.

the aristocracy were brought under subjection to the laws, and no longer, as in ancient times, in a condition to tyrannize over the rest of the community*.

It is impossible, owing to the scantiness of materials, to determine precisely at what period the commons were first permitted to have a voice in the government; but they appear to have been summoned to Parliament even in the reign of King John, and early in that of his successor; the writs for their election, in the 49th of Henry III. are extant†, and, from the reign of Edward I. they formed a distinct branch of the Legislature. Writers who have espoused the cause

* Birch's Edition of Bacon's Works, Vol. II. p. 39 and 41. The paper from which this is extracted, is entitled, "Observations on a Libel published this present year, 1592."

† Cottoni Posthum. p. 15. Prynne, who thinks that the writs to the commons first began in 49th Henry III. says, "The writs of Rot. Claus. 15 Joh. pars 2. M. 7. dorso. Patents 8. H. 3. pars 3. M. 4. Dors. et Claus. 38 H. 3. dors. 13—which seem somewhat like a summons of knights to Parliament—being conceived by some, upon good grounds, not to be a direct summons of any commoners or knights of shires to Parliament, as members, but in another kind; whenas, we find writs of summons to Parliament directed to Bishops, the temporal Lords, and Barons, before 49 H. III. without any such writs for knights and burgesses." *Preface to Cotton's Abridgment of the Records.* That the knights of shires were not directly summoned *as members* before that time, is likely enough: for nothing springs up to perfection all at once; and I conceive it most probable that the first attempts were not of a decisive nature. Still these were approaches to the measure. The reason assigned for summoning burgesses is —"Ut quod omnes tangit, ab omnibus approbetur." *Brad. on Burghs*, p. 33. The burgesses are said to have been summoned for the first time, the year after the knights were called.

of prerogative—as if they deemed it a sufficient reason for consigning the people to slavery, that they can plead the precedents of former times—have laboured to establish, that, in an early age, the Lower House was held in little estimation, and that it slavishly adopted the views of the Crown; but we discover no traces of this, either in the journals of Parliament, and other authentic sources, or in the laws which the Lower House passed, or the taxes it imposed. It was indeed the interest of the Commons to assist the Crown in controlling the greater aristocracy, since it was only by such a union of strength that they could hope to counterpoise the pernicious power of that body, and their councils acted under the direction of this policy—policy so obvious, that the monarch used his influence to have the representatives of the people constituted into a branch of the Legislature; but it is to their honour that, even in the worst times, they maintained the grand principles of constitutional freedom. Irregularities were, no doubt, sometimes committed by the prince—which are, in a great measure, to be ascribed to the state of society—but the leading principles of the government were never forgotten by the people, who frequently compelled the monarch to recognise them, and to swear never to violate them more. They were consulted in all affairs of peace and war—regarding the marriages of the princes—the domestic government, &c. and they even occasionally pursued measures which,

in modern times, would be held as an invasion of the prerogative:—Thus, in the 15th of Edward III. they insisted upon the nomination of the Chancellor, and other great public officers, being committed to Parliament *. Their grants of money were, for ages, generally conditional, and they often concurred with the Lords in the appointment of treasurers, for the expenditure of the money upon the business for which it was voted; while they, not rarely, inserted a clause into their money bills, that the grant should not be drawn into a precedent, and that it proceeded from the free and voluntary gift of the Lords and Commons †. By

* Cotton's Abridgment of the Records, p. 32.

† Cotton's Abridgment. The same author, in his work entitled, "A Discourse of Foreign War, with an Account of the Taxations upon the Kingdom to the end of the Reign of Queen Elizabeth," tells us, "That as well in this reign," (Richard the Second's,) "as some of his predecessors and successors, the Parliament was so tender in granting subsidies and other taxes, that they added into their act *quod non trahatur in consequentiam*—that it should be no example for the future, appointing peculiar treasurers of their own to give account upon oath to the next Parliament. And such grants, which they professed to proceed ex liberâ et spontaneâ voluntate dominorum et comitatuum—from the free and voluntary grant of the Lords and respective counties, to be void if conditions on the King's part were not performed." P. 19. See generally in proof of the text, both this treatise and *Cottoni Posthum.*

The limited extent of the prerogative in regard to the Barons in early times—for instance, the time of Henry III.—appears from all authentic history. See Mat. Paris, Daniel, &c. In a remonstrance to the King, an. 1242, the Barons use these words: "Tali, scilicet, conditione quod illa exactio, vel aliæ precedentes amplius non traherentur in consequentiam." *Mat. Par.* p. 516. The Short View of the Long Reign of Henry III. by Sir Robert Cotton, is not altogether correct, as the author ascribes some acts

the 28th of Edward I. c. 8th and 13th, the Commons, in the counties, were empowered to elect their own sheriffs—a privilege which was, however, withdrawn by the 5th of Edward III. c. 17.

How erroneous, therefore, is the estimate taken by the accomplished Mr. Hume, of English liberty

to the Commons which were done by the Barons—but in other respects it is very faithful. This was first published in 1642—and has been transcribed into Somers' Tracts. On its publication, some deductions from it, in relation to the circumstances of the times, were attempted by some publisher, who, it would appear, had said that it had been presented "to King James, of blessed memory;" and the late Editor has questioned its authenticity—as a book of such a kind could not be presented to a monarch so attached to his prerogative. But this fact, of its having been presented to James, does not appear from the edition of 1642, which I have met with, published along with Hayward's Henry IV.; and it is unfortunate that this very ingenious gentleman had not seen some copy of the original publication, before he hazarded that opinion. None of the references are given in the copy inserted into the tracts; but these are so numerous, and display such erudition, as to leave no doubt on my mind of its authenticity. It required the learning of Cotton to compose it, and is quite in his style, while it contains the very errors which pervade his other works. Indeed it is inconceivable that any politician of the year 1642 could have devoted himself to a history, so dry—by way of parallel—to the passing events. As for the liberality of the sentiments, they are such as Cotton uttered elsewhere—and they do not exceed, but rather fall short of, those of Daniel in his history, who yet held a place at Court in the reign of James the First, being groom of the privy chamber to the Queen. In the year 1626, Charles threatened to take Cotton's books from him—*because he was accused of imparting ancient precedents to the Lower House.* Brit. Mus. Ays. 4161, Vol. 2d of a Collection of Letters. Letter, dated 28th August 1626. This threat was afterwards put in execution, and the circumstance was alleged to have broken that great antiquary's heart. Same Col. No. 53. Letter dated 12th May, 1631. There is an old manuscript copy of Cotton's History in the British Museum. Harl. 2245.

in former times! He inculcates the notion that the English enjoyed no more freedom than the inhabitants of France and other continental states; and that they were not themselves sensible of any superior privileges. But, had he investigated the matter more deeply, he would have discovered a marked distinction in the respective governments, as well as that it was acknowledged in the strongest terms by foreigners, and fully appreciated by the people themselves. Sir John Hayward, a writer of Elizabeth's reign, in treating of the illegal and oppressive government of Richard II. says, "All men were well acquainted with what tributes and taxations the Frenchmen were charged, having in every country lieutenants and treasurers assigned—the one to draw the blood, the other the substance, of the slavish subjects.*" Sir John Fortescue, who presided for many years as Chief Justice, and was afterwards nominated chancellor to Henry VI. in his celebrated book, *De Laudibus legum Angliæ*, and in his other work, which is composed in English, commonly entitled, The Difference between Absolute and Limited Monarchy, though by himself styled The Difference between *Dominium Regale, et Dominium Politicum et Regale*†, describes the constitution and privileges of England in terms which must elicit the approbation of the most liberal in our own times, while he depicts the despotism and mi-

* Life and reign of Henry IV. p. 250.

† This is the title which the Treatise bears in the MS. in the British Museum and in the Archbishop's Library at Lambeth.

sery of France, of which he was an eye-witness, having retired thither with the wife and son of the unfortunate Henry, in colours that inspire us with horror. According to his description, the English lived under the protection of laws enacted by themselves; in France, the principle of the civil code prevailed,—that the will of the monarch is law: the English paid taxes of their own imposing; the French, with the exception of the nobility, to whom the king granted an immunity from taxation, lest he should drive them into rebellion, were plundered at the discretion of their prince: the English, upon any charge of crime, had the benefit of a trial by a jury of their peers:—in France, confession was extorted by the rack "a custom," remarks the author, "which is not to be accounted law, but rather the high road to the devil." In England, there was an independent middle class of society:—in France, all was noblesse or wretched peasantry. In England, the people lived in security and in comfortable circumstances: in France, they were in the most deplorable misery; for every ramification of government was corrupt; those who began to accumulate a little capital were directly plundered by the monarch, of the first reward of their industry; this despotic system required the support of an army, and these, *all foreigners*, were sent to live at free quarters on the inhabitants, whom they pillaged and abused without mercy, only shifting their quarters when they had completely exhausted the substance of their hosts. Somewhat of Fortescue's

description might be ascribed to the partiality of an Englishman, were not his testimony fully confirmed by the evidence of a co-temporary French author, Philip de Commines, who paints the despotism of France, and the wretchedness of the people, in equally glowing colours, heightening the picture in regard to the soldiery, for their brutal licentiousness towards the wives and daughters of their hosts, while he declares England to be the best governed country he had ever known *.

Thus it appears, from incontestible evidence, that England, at an early period, was distinguished for her freedom, and the comparative happiness of her people: But every thing is comparative, and, in speaking of the people, we ought never to overlook the number who are included under the appellation: as, in ancient times, the slaves, far more numerous than their masters, were ranked amongst things, so, infinitely the greater part of the former inhabitants of England neither enjoyed the privileges, nor were included under the name of the people. The population of the towns bore a limited proportion to that of the country; and though England was happy beyond her neighbours in a class of smaller proprietors, copy-holders, and lease-holders, the bulk of the inhabitants directly

* These authors, Fortescue and Commines, represent matters in so very striking a point of view, that I have transcribed some passages, and thrown them into the form of a note at the end of the volume. They will be found very opposite to the description of English liberty given by Mr. Hume, and as I am afraid I have scarcely done justice to them in the text, I earnestly recommend them to the reader's perusal. Note (A.)

depended on the aristocracy. Yet these dependents were far happier than the French peasantry; for they were the soldiery of the kingdom, and, besides that they were necessarily imbued with somewhat of the pride and spirit of men in arms—and it was the interest of their superior to preserve them in a certain degree of comfort—they had oppression to apprehend from one quarter only, while the French were neither entrusted with arms, and, consequently, neglected by the proprietor, nor protected against the brutal licentiousness and rapacity of foreign military *.

The revolution in manners which the towns had been gradually introducing, was rapidly advanced by the bloody wars between the houses of York and Lancaster. From that contest, which was merely a struggle for superiority between opposite factions of the aristocracy, the people, who were jealous of the nobility and gentry, stood aloof, probably not displeased to observe the factions mutually wasting their strength; and, as they did not engage in the quarrel, they were exempt from the calamities of the war, which fell wholly upon the aristocracy and the men in arms, but particularly the first. There were no burnings, plunderings, nor devastations; the common affairs of the king-

* Harrison, who published in 1577, tells us, that there are no slaves in England; that the instant one sets his foot on English ground he is free as his master; and that every particular man is supposed to be present in parliament, either by himself or his attorney:—yet says, that the fourth class in the community, including copy-holders, &c. "have neither voice nor authority in the commonwealth, but are to be ruled and not to rule." P. 163, 173.

dom proceeded as in a profound peace. But the aristocracy suffered dreadfully: many noble families became extinct, and none altogether avoided the consequences incident to such a struggle, while new men necessarily rose on their ruins or misfortunes. The practice of the contending parties, particularly of Edward IV. till his victory over Warwick at Barnet, where there was an indiscriminate slaughter, was to call out to spare the soldiers, but to slay the nobles and gentry—and few of them escaped *. The safety of each party, as it prevailed, demanded rigorous measures for the depression of its adversaries' power; and the vanquished would, to remove suspicion, rather plunge into expense than cultivate the means of recruiting their strength. Henry VII. owed his elevation to the smaller faction; and the York party, who were hostile to his advancement, being by far the most numerous, were eager to dethrone him, in order to recover the influence and property of which his rise had deprived them. His followers, on the other hand, whom the exaltation of their chief had restored to their properties, or whose sufferings and devotion to the house of Lancaster it had recompensed out of forfeitures from their enemies—had one common in-

* Commines, a co-temporary, l. iii. c. 4, 5, 6, 7. See also l. v. c. 18. Edit. 1634, a Rouen, p. 471. Stow, in detailing the battle of Northampton, 38, H. 6, says, "The tenth day of July, at two of the clocke, afternoone, the Earles of Marche and Warwecke let cry, thorow the field, that no man should lay hand upon the king, ne on the common people, but on the lords, knights, and esquires." P. 409.

terest with their leader: While, in consequence of the repeated insurrections, he could confirm their fidelity by fresh grants from new forfeitures. Henry was too politic a prince to act without the intervention of the legislature; but the posture of affairs enabled him to procure parliaments composed of his adherents, who were consequently ready to promote his views, as they accorded with their own. In the first flush of success, when their enemies were dejected, the Lancastrian faction were not likely to be greatly opposed in elections for parliament; and Henry exerted the influence of the Crown in favour of his own partizans *. From the attainders and deaths of the temporal peers, their number was diminished, and those attached to the York party would be intimidated from opposition, while the successful faction knew it to be their interest to improve their advantage. The spiritual peers, at that time, formed a large proportion of the upper House, and were inclined to support the government, in order to obtain the favour of the monarch, who even employed them chiefly in secular affairs, and con-

* Grafton, speaking of the second Parliament summoned by Henry, says—"He therefore summoned againe hys great court of parliament, whereto he woulde that there shoulde bee elected the most prudent and grauous persons of euery countie, citie, port, and borough; and in especiall such as he in al his daungers, calamities, miseries, and tumulteous affaires, used, trusted, and fauoured, as partakers, councelers, and companions, both of his wo and aduersitie, and also of his triumph and glorious victory, whose mindes and studies he perfitly knewe to bee fixed and set in the politique regiment and prudent gouernaunce of the publique welth of his realme and dominion." P. 857.

nived at clerical usurpation *. The ineffectual attempts of the Yorkists to dethrone Henry, taught his adherents the necessity of strengthening the royal power, for the common benefit of the party, and of seizing the critical moment for weakening the aristocracy, from whom they principally apprehended danger.

The king and the parliament having thus the same interest, calculated their measures for depressing the aristocracy as the grand objects of fear. The old laws against armed retainers were strengthened by additional enactments; and as it was by the number of their retainers that the Yorkists could hope to regain the ascendancy, the provisions of the legislature were rigorously enforced. But the ordinary courts were unable to carry the laws into effect against powerful families, who either influenced or overawed juries—amongst whom, at this time, from the preponderance of the Yorkists in number, they must have had unusual favour—and not unfrequently intimidated the judges themselves. The very being of the triumphant party, however, required the execution of the statutes against armed retainers; and therefore a new court—that of the Star Chamber—was created †, for the trial of offences against those statutes—according to an arbitrary course, alien to the equitable jurisprudence of England.

* See Bacon's Hist. in regard to Henry's employment of Churchmen. P. 582 of *White Ken. Col.* Vol. I. This Monarch first instituted yeomen of the guard. *Halle,* fol. III.

† In the next Chapter I trust this point will be found proved.

During this reign, its powers were limited; but they were greatly extended in the next; yet, as that court reached potent families, who, from their influence over juries, were above the controul of ordinary jurisdiction, it does not appear to have been displeasing to the people. But it exceedingly invigorated the prerogative; and from its services in that respect, its powers were arbitrarily enlarged, after the pretext for such an irregular institution had ceased, till it threatened to absorb all other jurisdiction, and was abolished as a nuisance intolerable to every rank.

During the reign of Edward I., the aristocracy, then very powerful, had, in order to preserve the greatness of their families, procured a statute, commonly called *De Donis*, to authorize entails; and, though the people complained of its impolicy, the nobility would not consent to its repeal. The clergy, whose ambition of acquiring lands stimulated them to many ingenious arts, or finesses, for defeating the laws, had devised one, called *a common recovery*, for evading this; and courts of law had, so early as the reign of Edward III., thrown out hints of its validity. But it was only in the time of Edward IV. that what is denominated a *common recovery* was decided to be a legal conveyance which removed an entail; and it must be confessed that the season was most fit for such a judgment. Edward was no less anxious to punish his adversaries, than to reward his hungry followers; and it is unnecessary to add, that his partisans participated in his

feelings; but, as the law of entail often saved estates from forfeiture, his judges removed the obstacle, by deciding that *a common recovery* was a valid conveyance—a decision which, while it promoted the views of their master and his faction, gratified the people, especially the active and intelligent, who had industriously accumulated the means of purchase, and was doubtless not displeasing to many old families themselves, who laboured under a load of debt, and were debarred from sales. This decision, by defeating the statute *de donis*, virtually repealed it; and the legislature, in the reign of Henry VII., which was as much under the dominion of feelings favourable to such policy as the partisans of Edward had been, though it did not abrogate the statute, indirectly authorised the *finesse* which rendered it nugatory. The device became a common conveyance; and, that there might be no pretext for impugning it, received, indirectly, additional confirmation by Parliament, both in the next reign, and in that of Elizabeth*. The law in regard to fines upon alienation, was not only hostile to transferences of land, but had been productive of great insecurity to purchasers, and a statute was devised as a remedy for the evil†; but it is alleged that Henry had farther a covert intention of defeating entails, by *fines;* and such a construction was put upon the statute by 32 Henry VIII. c. 36. "which," to use

* Blackst. vol. ii. p. 115, *et seq.*

† Coke's 2d Inst. p. 518.

Blackstone's words, "declares a *fine* duly levied by tenant in tail to be a complete bar to him and his heirs, and all other persons claiming under such entail *." Restrictions on the transference of land being thus removed, great tracts, which were entailed on old families, passed into other hands—carrying the influence from the old proprietors, and conferring a different kind upon the new, who were not in a condition to aspire at baronial power.

The great aristocracy thus weakened, and precluded their former field of ambition by the severity of the laws against armed retainers, gratified their desire of distinction daily more and more, by indulging in expensive habits of luxury. The king's conduct, in another respect, must have contributed to these habits, while it straitened many in the means. Under the colour of the penal laws, he wrung large sums from the subject, to gratify his mean, yet predominant, passion of avarice †; and, as he was too politic a prince to provoke his adherents by extortions from them, the Yorkists would naturally endeavour to avert the evil, by removing any cause of fear in the monarch, which could be best accomplished by habits of expense, incompatible with the idea of mustering strength to overturn the government. To increase their revenue, the aristocracy were obliged not only to diminish, in an unprecedented manner, the number

* Vol. ii. p. 117. † See Bac. *Hist.*

of their idle followers; but to pursue, on a far more extensive scale than formerly, a system, which had been long creeping in, of dismissing a numerous petty tenantry, who contributed much to the power, but little to the profit of the proprietor; and of letting their lands in large tracts to individuals, who undertook to pay considerable rents. Though this system was necessarily much encouraged by the policy of Henry and his faction, it was opposed by them,—a statute for keeping up farm-houses, in conformity with previously existing laws against depopulation, having been passed during this reign *; but nothing could more effica-

* It appears, as well from the Statute Book, see 4 H. 4 cap. 12, as from the declamation of John Rous, the antiquary of Warwick, who died at an advanced age in 1491, that the system of pasturage and enclosing had been going on for a considerable time. J. Rossi *Hist.* p. 39—44, 88—96, 114—137. This author paints the evil in the strongest colours, dwells upon the inhumanity of expelling the inhabitants from their possessions, and prophecies general desolation; while he denounces eternal damnation upon the depopulators. His reasoning has some plausibility:—"Isti villarum et ecclesiarum parochialium dirutores, deo offendunt, homines rationales a villis ejicientes et bestias pro eis irrationales inducentes. Ecclesiæ dei offendunt, ecclesias deo dedicatas destruentes, decimas antiquas minuentes, et solitas oblationes annihilantes. Regiam celsitudinem lædunt, eo quod ubi prius homines, ad regis et regni defensionem corpore robustos et fortitudine habiles habere solebat, modo tantum bruta animalia remanent. Pauciores etiam solito sunt modo ubi hæc pestis regnat villæ, et ex consequenti pauciores homines, et nullæ aliæ villæ per hoc crescunt, sed potius, læduntur, quia in allocatione per regiam misericordiam taxationum domini villarum dirutarum de ipsa allocatione pro carentia tenentium magnam partem ejusdem allocationis eismet appropriant, et totum onus super villas non dirutas apponunt. Offendunt etiam civitatibus et villis mercatis multipliciter, tum quia causant caristiam: Nam ubi deficiunt coloni, deficiunt etiam grana, et per villarum destructionem, multi pauciores sunt coloni, et solita cultura reducitur in her-

ciously sweep from the aristocracy the prospect of recovering their influence in the community.

bagium. Sequitur ergo necessario ex hoc major parcitas granorum, et ex consequenti oritur et augetur caristia, et multimode minoratur habunduntia qua civitates burgæ et villæ mercatæ prosperabantur: tum quia, villis dirutis, est minor populi affluentia venientis ad nundinas et mercatus, et per hoc minuitur emptio et venditio, unde mercatores ceterique mechanici depauperantur, quorum depauperatio minatur ruinam civitatum, burgorum et villarum, ubi major populi confluentia adesse solebat, et si continuaretur, regni totius desolationem procuraret, quod absit." P. 40—1.

The aristocracy, while they pursued this system, were afraid of losing the population, and therefore got laws* to restrain the poorer country people from going to trades. Such is the selfishness of man. But it is not singular. It is well known upon what principle the emigration from the Highlands of Scotland was so keenly opposed. See Selkirk on that subject.—Dr. Henry's observations upon the depopulating system of England are notable enough. Vol. x. b. v. ch. 5, § i. He conceives that there must have been an immense loss of lives by the wars in France, and afterwards by the civil wars: that proprietors could not easily procure hands to labour their grounds, and therefore banished the inhabitants, and substituted brutes for men! The loss in the French wars must have been soon supplied; and though historians have mentioned great losses in the civil wars, if we may credit Commines, the loss of lives, except amongst the nobility and gentry, was not great. But a loss of this kind is never felt.

The aristocracy lost their villains or slaves by the change of manners, as they fled to the towns, and were enfranchised. This galled that body exceedingly; and in the 1st R. ii. it was complained of that villains would join the king's enemies to be revenged of their lords, and had subscribed large sums for mutual support. In a few years afterwards, the nobility complained that their villains fled from them to towns, where the burgesses, under colour of their franchises, detained them; and that the rest behaved so insolently, that their masters were afraid to exercise their authority for fear of losing them. See Eden's *Hist. of the Poor*, vol. i. p. 30.

* St. 12. R. 2, 7 H. 4, c. 17; see also 2 H. 5, c. 4; 4. H. 5, c. 4; 2 H. 6. c. 18; 32 H. 6, c. 12; by 8 H. 6. c. 9. the custom of London about apprentices is confirmed in spite of 7 H. 4; and a dispensation is granted to the city of Norwich by 12 H. 7, c. 1.

The faction that raised Henry, insisted, for their own security, upon his marriage with Elizabeth, the eldest daughter of Edward IV. whose title to the crown by descent was allowed to be best founded. The marriage was humiliating to him, as it implied the defectiveness of his own title, and consequently made him a king by courtesy rather than by right; but, as it united the opposite pretensions to the throne in the person of his son, it had the effect of closing the contest. Though, however, the cause of dissension was thus withdrawn, so fierce, so bloody, and so protracted a contest must have left bitter animosities behind, which, while they weakened the aristocracy in regard to the crown, as the monarch could have opposed one faction to the other, necessarily promoted the change in manners. Both parties courted the monarch, and Henry VIII. rendered himself popular with both, by an equal dispensation of his favours. He, at the same time, set an example of a different course of life, by his taste for learning, and profuse expenditure on elegancies and luxuries; and, from the anxiety of each faction to gain the royal favour, as well as from the commanding influence which he derived from his personal qualities in such an age, he could not fail to lead the fashion.

The young king possessed far more learning than generally falls to the share of princes, a circumstance which has been variously accounted for, —from the intention of his father during the life of prince Arthur, the eldest son, to qualify Henry for

the Archbishopric of Canterbury * (though, as Arthur died before Henry had completed his twelfth year, the studies of the latter could not have proceeded far with that view, and Arthur is said to have been equally learned †)—and from the jealousy that the father entertained of his sons' superior title to the throne, which made him anxious to employ their minds in study, that they might be diverted from thoughts of government; but it ought most probably to be greatly attributed to the good sense of Henry VII. who, though pronounced illiterate by Burnet, appears to have made no despicable progress in literature ‡. The era at which the young king mounted the throne was a most important one; for the human mind, awakened from a slumber of centuries, entered upon the study of polite literature with the ardour of youth, and the art of printing, then brought to some perfection, had the effect of communicating a simultaneous impulse throughout Europe. His knowledge inspired veneration, and his patronage of learned men obtained for him the zealous voice of a body that be-

* Herbert in White Ken. Col. p. 1.

† Burnet's *Hist. of Reformation*, vol. i. p. 18.

‡ At this time the aristocracy were utterly illiterate. See Henry's *Hist.* Vol. XII. B. 6. C. 4. § 1. But the most convincing proof is, that so late as Edward VI's. reign, a statute was passed to extend the benefit of clergy on conviction of crimes, to peers, though they could neither write nor read. Now Henry VII. kept a journal with his own hand, was intimately acquainted with French, and understood Latin—a great deal for the age in which he lived—the standard by which his pretensions ought unquestionably to be tried. See Bac. p. 637.

gan to be everywhere respected, and to possess considerable influence over public opinion. Though accomplished, Henry was no pedant. His manners were frank and perfectly in unison with the genius of the age. He was skilful in music, and excelled in all the manly exercises to which in that age the higher classes were devoted. The effect of these qualities was heightened by the advantage of a good exterior: His ruddy complexion and portly figure were particularly calculated to make an impression on the fair sex as well as the multitude *. The very first measures of his government heightened all these advantages. He withdrew the royal protection from Empson and Dudley, two of his father's legal engines of oppression, who suffered the punishment due to all who are instrumental in promoting tyranny under the form of law. He restored part of his father's ill-acquired property, and profusely squandered the funds which had been so industriously hoarded †.

* Herbert, p. 1. *et seq.* Halle, first year of Henry VIII. Hol. 799, *et seq.*

† Halle, first year of Henry's reign. Hol. 799, *et seq.* Herbert, p. 1. *et seq.*

Empson's defence before the council, previous to his commitment to the Tower, is remarkably good. It appears to me to be superior to the far-famed peroration of Strafford. But he fell a sacrifice to the aristocracy, and with the king's consent; and he is reported to have been the son of a sieve-maker; therefore his eloquence passes unheeded. I cannot forbear transcribing it: "I have remarked," says he, "two causes in general that move attention; one is the greatness, the other is the strangeness and novelty of argument. Both these concur so manifestly in the affairs now questioned, that I will not much implore your patience. Though, on the other side, considering my violent persecu-

Such a character was quite calculated to lead the fashion in a new course of life for which so many other circumstances had prepared the highest

tion, I cannot but think it a favour that I may speak for myself; but, alas! to whom? The king, my master, to whom I should appeal, as to my supreme judge and protector, abandons me to my enemies, without other cause than that I obeyed his father's commands, and upheld the regal authority. The people, on whose equal trial I should put my life, seek my destruction, only because I endeavoured to execute those laws *whereof themselves were authors*. What would have happened to me if I had disobeyed my king, or broke my country's laws? Surely, if I have any ways transgressed, it is in procuring that these penal statutes might be observed *which yourselves in open Parliament decreed*, and to which you then submitted, both your persons, estates, and posterity: and if this be a crime, why do you not first repeal your proper acts? Or if, which is truth, they stand still in full force and virtue, why do you not vindicate from all imputation both yourselves and me! For, who ever yet saw any man condemned for doing justice, especially when, by the chief dispenser thereof, which is the king, the whole frame of the proceeding hath been confirmed and warranted? Nay, who ever saw man on these terms not rewarded? And must that which is the life and strength of all other actions, be the subversion and overthrow of mine? Have you read or heard in any well governed country, that the infractors of laws made by public vote and consent, escaped without punishment, and they only punished who laboured to sustain them? Or when you had not read or heard any such thing, could you imagine a more certain sign of ruin in that commonwealth? And will you alone hope to decline this heavy judgment? When, contrary to all equity and example, you not only make precedents for injustice and impunity, but, together with defaming, would inflict a cruel death on those who would maintain them, as if this might be a fit guerdon for those, who, I must tell you, everywhere else would have been thought the best patriots, what can we expect then but a fatal period to us all? But let God turn this away, though I be the sacrifice. Only, if I must die, let me desire that my indictment may be entered on no record, nor divulged to foreign nations, lest, if they hear, in my condemnation, all that may argue a final dissolution in Government, they invade and overcome you." Herbert, p. 3. Empson perhaps deserved his fate; but of all state offenders in modern times who have canted about their

ranks; and, as the lower independent ranks were inclined, for their own security and respectability, to support the monarch, in repressing the insolence and dangerous power of their superiors, it is not wonderful that the change of manners advanced with unprecedented rapidity.

This grand revolution in manners, how beneficial soever to towns, to the smaller proprietors, and to such as could undertake extensive agricultural concerns on lease, came fraught with the most deplorable consequences to the numerous dependents of the aristocracy. Had the importation of manufactures been prohibited, had there been perfect liberty allowed in the choice of trades and professions, and had a free trade in grain been permitted, the evil would have been greatly mitigated, as much of the superfluous population dismissed from estates might have found employment in a more independent way than formerly, stock might have been quickly accumulated, and the whole country enriched*. But, unfortunately, the

virtue, he spoke to the greatest purpose. In passing, we may remark a curious fact in regard to the advocates for the antiquity of the Star-Chamber: This individual, who had been a member of Council during the preceding reign, was first attacked there, and committed by it to the Tower, that he might meet the justice of his country; and they have argued that this proves, that as the Star-Chamber and Council were the same, it acted as a court of law.

* The view taken in the text is so opposite to that of Dr. Adam Smith, and now generally adopted, that I have conceived it necessary to discuss the subject at considerable length in Note B. at the end of the volume. I have, therefore, earnestly to request that the reader,

selfishness of the different branches of the Legislature led to the adoption of very opposite policy. The interests of the people were so far neglected, that the population, dismissed from estates, were precluded the towns, and prevented by severe laws from earning subsistence by the coarsest manufactures,—policy that bereft them of every medium through which they could acquire the means of life: and, strange it is, that this did not proceed entirely from the influence of the towns, which were naturally actuated by the principle of monopoly, but from the mean selfishness of the owners of land, who, while they mercilessly dismissed their dependents, were yet afraid that the influx of inhabitants into towns might raise the wages of country labour *. The same spirit of selfishness, or at least folly, in the aristocracy, made them keep the ports open for foreign wrought goods, that they might purchase manufactures from the cheapest market, and, as Antwerp and other continental towns had accumulated more capital, and made greater improvements in machinery, they could furnish the goods of so superior a fabric, and on so comparatively moderate terms, as to pre-occupy the English market and retard the prosperity of that

before he condemns my principles, will do me the justice to give the note a careful perusal.

* It is almost unnecessary to quote authorities on a point so well known, I shall, therefore, refer, generally, to Anderson's Hist. of Com. to Eden on the Poor, and to Dawson's Inquiry. P. 134. Also to the statutes quoted in a preceding note, and to 5 and 6 Ed. VI. c. 8. 4 and 5 Ph. and M. c. 5. 5 Eliz. c. 4.

country *. Absurd notions about forestalling, and the confined views of the monarch in regard to population, prevented all trading in grain, a circumstance necessarily productive of baneful consequences. For the consumption of produce on estates being by the dismissal of dependents so greatly diminished, and the exportation of, and even dealing in corn, being prohibited by absurd and iniquitous laws,—whence one province might be exposed to all the misery of famine, though another at a small distance was overstocked with grain,—while wool, for which there was a great demand from abroad, was a free article of commerce, proprietors of land found pasturage more profitable than tillage, and quickly laid down their lands. This greatly augmented the misery of the lower ranks; for, as pasturage does not require a third of the hands necessary for tillage, the superfluous population was dismissed, and enlarged the number of the destitute †. Without

* The woollen manufactures of England had been greatly fostered and protected by laws, (the importation of foreign cloths was even prohibited by the 2d of Edward 3. c. 3.) and flourished so much, that there was a considerable export annually; but almost every other species of manufacture was imported. Anderson's *Hist. of Commerce*, v. ii. 4to. ed. A law, passed in the time of Henry VII. to protect the home manufacture of small silks—prohibited the importation of these articles, which, says Bacon, "touched at a true principle." Hist. p. 631. In the same reign, we trace in one act the principle which afterwards formed the basis of the navigation laws. Wines and woads from Gascony and Languedoc, were ordered to be imported in English bottoms only. Bacon, p. 597.

† We have seen what John Rous says upon depopulation—and shall now quote the observations of the famous Sir Thomas More. "Oves, inquam, vestræ quæ tam mites esse, tamque exiguo solent ali, nunc tam edaces atque indomitæ esse cœperunt, ut homines doverent

country labour—precluded the towns, and prevented from deriving a subsistence by any species of manufactures—a great part of the people were

ipsos, agros, domos, oppida vastent ac depopulentur. Nempe quibuscunque regni partibus nascitur lana tenuior, atque ideo pretiosior, ibi nobiles et generosi, atque adeo abbates aliquot sancti viri, non his contenti reditibus fructibusque annuis, qui majoribus suis solebant ex prœdiis crescere, nec habentes satis, quod otiose ac laute viventes, nihil in publicum prosint, nisi etiam obsint, arvo nihil relinquunt, omnia claudunt pascuis, demoliuntur domos, diruunt oppida, templo duntaxat stabulandis ovibus relicto, et tanquam parum soli perderent apud vos, ferarum saltus ac vivaria, illi boni viri habitationes omnes, et quicquid usquam est culti, vertunt in solitudinem. Ergo, ut unus helluo inexplebilis ac dira pestis patriæ, continuatis agris, alliquot millia jugerum uno circumdet septo, ejiciuntur coloni quidam suis, etiam aut circumscripti fraude, aut vi oppressi exuuntur, aut fatigati injuriis, adiguntur ad venditionem."—So Sir Giles Overreach was, then, no ideal monster. It was not the right of ownership alone that was exercised; small proprietors were either circumvented, oppressed with actual force, or wearied out of their possessions by injuries." Itaque quoquo pacto emigrant miseri, viri, mulieres, mariti, uxores, orbi, viduæ, parentes cum parvis liberis, et numerosa magis quam divite familia, ut multis opus habet manibus res rustica: emigrant, inquam, è notis atque assuetis laribus, nec inveniunt quo se recipiant, supellectilem omnem haud magno vendibilem, etiam si manere possit emptorem, quum extrudi necesse est, minimo venundant: id quum brevi errando insumpserint, quid restat aliud denique, quam uti furentur et pendeant juste scilicet, aut vagentur atque mendicent, quamquam tum quoque velut errones conjiciuntur in carcerem, quod otiosi obambulent, quorum opera nemo est qui conducat, quum illi cupidissime offerant. Nam rusticæ rei, cui assueverunt, nihil est quod agatur, ubi nihil seritur. Siquidem unus opilio atque bubulcus sufficit ei terræ depascendæ pecoribus, in cujus cultum, ut sementi faciendæ sufficeret, multae poscebantur manus. Atque hac ratione fit, ut multis in locis annona multo sit carior. Quin lanarum quoque adeo increvit pretium, ut a tenuoribus, qui pannos inde solent apud vos conficere, prorsus emi non possint, atque ea ratione plures ab opere ablegantur in otium." Mor. Utop. L. 1.

Lord Bacon, in his History of Henry VII., says, that "enclosures at that time" (1489, when the law of Henry VII. about farm-houses

reduced to the last resort—of begging, theft, and robbery, and daily perished of hunger, or suffered for the irregularities into which they were driven. The evil might not be altogether instantaneous: vanity, shame, fear, compassion, might restrain many landlords from at once dismissing dependents, when they ceased to be necessary for pomp or power, and clogged their own views of a silly ambition; the difficulty of procuring tenants with capital, must have operated to a certain extent on others; but the Revolution, when it had reached a certain point, daily advanced with increasing celerity. Residence in town naturally weakened the sympathy between land owner and tenant: Each succeeding generation, educated in a new school, were imbued with different feelings *; and, besides that the opportunity afforded by leases of large tracts, to accumulate capital, encreased the number of tenants who were in a condition to embark in extensive undertakings †, proprietors

was passed) "began to be more frequent, whereby arable land, which could not be manured without people and families, was turned into pasture, which was easily rid by a few herdsmen; and tenancies for years, lives, and at will, whereupon much of the yeomanry lived, were turned into demesnes." P. 596.

* We learn from J. Rous, that, even in his time, the son always improved upon the father in this respect. "Avari patres cupidiores generant filios: ubi forte, pater pro cupiditate unam destruxit villam, ejus moribus avarus filius destruit plures villas." Hist. Rer. Ang. P. 89. It appears from a proclamation quoted by Stow, in 1521—a proclamation founded upon statute—that the evil had been proceeding rapidly for fifty years previously. Stow, p. 512.

† Leases to tenants were common at a very early period. In the award between Henry III. and the Commons, in the 51st of his reign

themselves, induced by the facility of managing immense flocks by herdsmen, and by means of enclosures, fell into the practice of retaining the natural possession of the soil *. Entails, too, being now rendered nugatory, great transferences of property took place; and the purchasers, feeling none of the sympathies that might be supposed to exist between their predecessors and their dependents on the soil, would not conceive themselves under any obligation to retain or support them.

Of the unrelenting barbarity with which this new system was pursued, we have unhappily the amplest testimony. "Now, the robberies, extortions, and open oppressions," said an indignant preacher before Edward VI. "of covetous cormorants, have no end, nor limits, no banks to keep in their vileness. As for turning poor men out of

—after some arrangement about the ransoms of proprietors who had been robbers—a proof of the barbarity of the times—it is provided, § 24, that "Fermors that were against the king, shall leise their *termes*, saving the right of their lords to whom they pay their yearly rent; and they that shall have the farms after the terms expired, shall render them to the true lord." St. Marlb. c. 16—23, provides, that "all fermors, *during their terms*, shall not make any waste, sale, nor exile of house, woods, men, nor of any thing belonging to the tenements that they have to farm, without special licence had by writing or covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amercement grievously."

* This is established by the passages already quoted from More and Bacon: but, from St. 25, Henry VIII. c. 13. to limit a flock to 2000, the practice appears to have reached an astonishing height. It is said in the preamble that some had 24,000.

their holds, they take it for no offence; but say, the land is their own, and so they turn them out of their shrowds like mice. Thousands in England, through such, beg now from door to door, who have kept honest houses *." It would be vain

* Bernard Gilpin, Strype's Ecclesiastical Memorials, vol. ii. p. 441. The language of these great and mighty men, says Gilpin, is, "that the commonalty lived too well at ease. They grew every day to be gentlemen, and knew not themselves. Their horns must be cut shorter, by raising their rents, and by fines, and by plucking away their pastures." *Ib.* The style of these preachers is so extraordinary, especially when we consider the chief auditor, that another sentence may not be unacceptable. "Oh Lord, what a number of such oppressors, worse than Ahab, are in England, which sell the poor for a pair of shoes, Amos ii. of whom, if God should serve but three or four of them as he did Ahab, to make the dogs lap the blood of them, their wives and posterity, I think it would cause a great number to beware of extortion. And yet escaping temporal punishments, they are sure, by God's word, their blood is reserved for hell hounds. England hath had alate some terrible examples of God's wrath, in sudden and strange deaths of such as join field to field, and house to house. Great pity they were not chronicled to the terror of others."

The famous Latimer also inveighed so bitterly before the king on the same subject, that the higher classes, as he himself observes, charged him with sedition. He says, p. 32, that where there had been "a great many householders and inhabitantes, there is now but a sheapheard and his dog"—he charges the aristocracy with intending "to make the yeomandry slauery, and the clergy slauery." He gives likewise a curious picture of his father's family, to prove the change of times.

"My father," says he, "was a yeoman, and had no lands of his own, onely he had a farme of 3 or 4 pound by year at the uttermost, and hereupon he tilled so much as kept halfe a dozen men. He had walke for an hundred sheepe; and my mother milked thirty kine. He was able, and did find the king a harnes, with himselfe and his horse, while he came to the place that he should receiue the king's wages. I can remember, that I buckled his harnes, when he went to Blackheath fielde. He kept me to schoole, or else I had not been able to

to attempt a description of the misery of those, who, no longer necessary for pomp or power, were mercilessly banished their homes, and debarred

haue preached before the King's majesty now. He maryed my sisters with fiue pound, or 20 nobles a piece, so that he brought them up in godlines, and feare of God. He kept hospitality for his poore neighbours; and some almes he gaue to the poore, and al this did hee of the said farme. Where he that now hath it, payeth 16 pound by the yeare, or more, and is not able to doe any thing for his prince, for himselfe, nor for his children, or giue a cup of drink to the poore." First Sermon before King Edward, p. 32. The preacher predicts the decay of learning and the gospel from this, as almost all divines were sons of yeomen. "Is this realme," says he, "taught by rich men's sons? No, no. Read the chronicles, ye shall find some time noblemen's sonnes, which haue beene unpreaching byshops and prelates, but yee shall finde none of them learned men. But verily, they that should looke to the redresse of these thinges bee the greatest against them."

See in Strype's Memorials, vol. i. p. 392, *et seq.* vol. ii. p. 141, *et seq.* passages quoted from different authors, which present the most direful picture:—whole towns became desolate, no man dwelling there except a shepherd with his dog, people starving and unjustly and illegally thrust out of their possessions.

In a proclamation by King Edward, in 1548, the misery arising from enclosures is described in strong colours. In some places, where there used to be 100 or 200 inhabitants, there was then scarcely one poor shepherd. "So that the realm thereby was brought to a marvellous desolation. Houses decayed, parishes diminished, the force of the realm weakened, and Christian people, by the greedy covetousness of some men, eaten up and devoured of brute beasts, and driven from their houses by sheep and bullocks." Strype's Ecclesiastical Memorials, vol. ii. p. 92, &c. The land owners maintained that they acted by their right of property; but it is a little odd that no such plea was admitted for money lenders, whom they would not permit to take interest. The aristocracy, however, were the legislators, and they were likewise borrowers. They pursued the same principle in regard to labourers, whose wages they attempted to regulate. The statutes on this subject, from 23 E. III. downwards, are full of complaints against labourers for exacting so much.

the means of subsistence, or yet the consequences that flowed from their misery. The country swarmed with beggars, thieves, and robbers: despair drove the wretched to repeated insurrections, which threatened the overthrow of all the established institutions of society *: The husbandman was plundered, the magistrate resisted, and the most cruel sanguinary laws failed to terrify men into submission who were perishing of hunger. The number of Egyptians, by augmenting that of a beggared population, increased the common calamities†.

* See Strype's Ec. Mem. Vol. II. p. 92, et seq. 150, 166, et seq. 353.

† Harrison's Description of England in Holin. Vol. I. p. 182, *et seq.* as to beggars. In p. 186, he says, "Our third annoiers of the commonwealth are roges, which doo verie great mischeefe in all places where they become. For they spare neither rich nor poore. But whether it be great gaine or small, all is fish that commeth to net with them, and yet I saie both they and the rest" (other kinds of malefactors which the author speaks of in the same chapter—the 11th) "are trussed up apace. For there is not one yeare commonlie, wherein three hundred or foure hundred are not deuoured and eaten up by the gallowes in one place and other. It appeareth by Cardane, who writeth upon the report of the Bishop of Lerouia, in the geniture of King Edward the Sixt, how Henrie the Eight, executing his laws verie seuerelie against such idle persons, I meane great theeues, pettie theeues, and roges, did hang up threescore and twelue thousand of them in his time." The enlightened and benevolent Sir Thomas More condemned the cruelty exercised towards these unhappy wretches, and held that no man could justly be put to death for theft. We learn from him, that twenty were frequently hung on one gallows, and yet that the evil was not abated. Utop. L. I. See Eden on the Poor, Vol. I. particularly p. 101, as to the cruelty of the laws against the poor. Even in the year 1596, when the mischief was greatly lessened, the state of the country was most wretched. Strype's

The melancholy state of the kingdom early attracted the attention of the Legislature, but its enactments were not calculated to meet the evil

Ans. Vol. IV. from 291 to 295. The nation was however plagued with worse rogues than these. Justices of peace were beyond measure corrupt. "These," said a member of the Lower House in Elizabeth's time—"be the basket justices, of whom the tale may be verified of a justice that I know, to whom one of his poor neighbours coming, said, Sir, I am very highly rated in the subsidy-book, I beseech you to help me. To whom he answered, I know thee not. Not me, Sir? quoth the countryman—Why, your worship had my team and my oxen such a day, and I have ever been at your worship's service. Have you so, Sir? quoth the justice—I never remembered I had any such matter, no not a sheep's tail. So unless you offer sacrifice to the idol-justices, of sheep and oxen, they know you not. If a warrant come from the Lords of the Council to levy a hundred men, he will levy two hundred, and what with chopping in and choosing out, he'll gain a hundred by the bargain." The same member declares that a justice of peace, "for half a dozen of chickens, will dispense with a whole dozen of penal statutes." D'Ewes' Journ. p. 661.

"Another way," says Strype, speaking of Edward VI.'s time—in 1553—(in Vol. II. of Ec. Mem. p. 439.) "they (the gentry) had of oppressing their inferiours, was when these were forced to sue them at the law for some wrong they had done them, or for some means which they violently detained from them. For either they threatened the judges or bribed them, that they commonly favoured the rich against the poor, delayed their causes, and made the charges thereby more than they could bear. Oftentimes they went home with tears, after having waited long at the court, their causes unheard. And they had a common saying then, Money is heard every where." The author gives some instances of gross corruption in the judges—principally taken from Latimer's Sermon before the King. That worthy prelate wished "a Tyburn-tippet for such as took bribes or perverted judgment, if it were the Judge of the King's Bench, the Lord Chief Justice of England; yea, if he be my Lord Chancellor himself—to Tyburn with him." Lat. Sermons. This preacher had suitors at all times praying him to intercede in their favour for justice; and he advised the King, the Protector, &c. to hear causes themselves. Even

—when it was the interest of the lawgivers to elude them*. The statute of 1489, for keeping up farm-houses, though pronounced by Bacon a statute of singular policy, and as evincing admirable wisdom in the King and Parliament, and which therefore Bacon, in his time, endeavoured to strengthen by additional laws—was merely a repetition of former enactments, and proves a change of system in the country, but did not relieve the misery of the people†. The law provided that all houses of husbandry, used with twenty acres and upwards, should be maintained and kept up for ever, with a competent proportion of land attached to them—under the penalty of seizure of half the profits by the King or the Lord of the fee, till the statute

murders by men of note escaped unpunished, through the baseness of the ministers of the law. Strype's Mem. Vol. II. p. 442. But the most incontrovertible proof is the following extract from Sir N. Bacon's speech as Lord Keeper to Parliament, in 1572, at opening the Session. "Is it not, trow you, a monstrous disguising, to have a justice a maintainer, to have him that should by his oath and duty set forth justice and right—against his oath, offer injury and wrong?—to have him that is specially chosen amongst a number by a prince, to appease all brawlings and controversies, to be a sower and maintainer of strife and sedition—by swaying and leading of juries according to his will—acquitting some for gain, indicting others for malice, bearing with them as his servants or friends, overthrowing others as his enemies—procuring the quest-monger to be of his livery, or otherwise in his danger, that his winks, frownings, and countenances may direct all inquests? Surely, surely, these be they that be subverters of all good laws and orders, yea, that make daily the laws, which of their nature be good, to become instruments of all injuries and mischiefs." D'Ewes' Journ. p. 153.

* Strype's Ec. Mem. Vol. II. p. 94, et seq. 171 and 172.

† 3 Inst. p. 204.

were complied with *. Bacon was not prevented, by the evident futility of this law for ages, from deducing mighty advantages from its supposed effect of rearing up a middle rank of society†. But the consolidation of farms was not retarded by these enactments, however individuals might be harassed by them; and, as the country population was so greatly diminished, while intercourse with the cities and large towns daily increased, provincial towns,—which had owed their importance to the demands of such a numerous body of country inhabitants for coarse articles of manufacture, &c. and could not compete in productions of an equal fabric with those furnished by the large towns—fell into decay ‡. But, as the laws about apprenticeships did not apply to them, part probably,

* Bacon's Hist. p. 596.

† In 1597, this great philosopher brought that important topic before the Lower House—and his speech was to this purpose: "Inclosure of grounds brings depopulation, which brings, 1*st*, Idleness. 2*dly*, Decay of tillage. 3*dly*, Subversion of houses, and decay of charity, and charges to the poor. 4*thly*, Impoverishing the state of the realm." "I would be sorry," says he, "to see within this kingdom that piece of Ovid's verse prove true—jam Seges ubi Troja fuit, so in England, instead of a whole town full of people, nought but green fields, but a shepherd and his dog." D'Ewes' Journ. p. 551.

‡ It appears from a passage quoted already from More's Utopia, that the lower classes used to manufacture some of their own articles of dress. Yet a part of the manufacture only—as the spinning—could be accomplished by them. See also Eden. p. 121, as to this. Moryson too, in his travels, published in the beginning of the seventeenth century, says, "Husbandmen wear garments of coarse cloth, made at home, and their wives wear gowns of the same cloth." P. 178. Both Hume and Eden—see the last at p. 109, have attempted to account for the decay of provincial towns but, in my opinion, unsatisfactorily.

by removing into the large towns, where their industry would be rewarded, escaped the misery of their former customers; a large portion must, however, have shared the common calamity—as their labour could no longer be required.

While the kingdom groaned under such wretchedness, the Reformation was effected; an event which, though it proved, ultimately, productive of the happiest consequences, in the outset greatly augmented the misery of the lower orders. By the dissolution of religious houses, the devotees of the old religion, with their attendants, paupers, &c. to an immense number, were thrown loose upon the world; and, though some regulations were devised, to afford part of them relief, the great body were obliged to join the common herd of rogues and beggars, or perish of hunger *. Nothing indeed, casts a great-

* The monks," says Eden, " to the number of fifty thousand, were converted into miserable pensioners, and, unaccustomed to the active exertions of industry, were thrown among the busy crowd, to whose manners and modes of life, a long seclusion from the world had rendered them indifferent," p. 94. That part of the monks got pensions, at the rate of four, six, and even eight pounds a year, is a point established by the clearest evidence. See Burnet's *History of the Reformation*, vol. I. p. 487. B. III. and No. 3. of Col. there referred to, Strype, *Ec. Mem.* vol. I, p. 262.—but this extended to a very small portion of the fifty thousand. Thus, in the case alluded to by Burnet, where the highest pensions were allowed—thirty monks had pensions assigned; but then there were thirty eight individuals, denominated religious persons, who were dismissed with a sum of money distributed amongst them, amounting only to £80, 13s. 4d. or little more than two guineas a-piece—a sum that could not support them above a few weeks or months at most: Besides these, there were 144 servants who were merely paid up any arrears of wages. It was in fact only those who were in priest's orders that became stipendiaries. According to some ac-

er stain upon the Reformation, than the treatment of the unhappy devotees of the old religion, who were not only divested of their livelihoods, but held up in every form to public abhorrence and scorn*, exposed to the harshest and most inhuman punishments by statutes directed particularly against them†; ridiculed on the stage in stupid in-

counts, no provision in the majority of cases was made for any. Anderson's *History of Commerce*, 4to. edit. vol. II. p. 63. And then the hospitals, to the number of 110, being also dissolved, an immense addition of poor, formerly provided for, were thrown amongst the general mass of the indigent.—It is quite ridiculous to suppose, that above a small proportion of the fifty thousand got pensions; because the annual rent of the religious houses was at the utmost only about £160,000, and even at four pounds a-piece, their aliment would have much exceeded the whole. It is true, that this annual rent was not a tenth of the value, because these houses had granted leases at low rates for large fines: But, in the mean time, it stood thus. The begging friars, I presume, were never thought of, while their trade was interdicted; and, it would appear, that the pensioners had much difficulty in getting their annual pittance. Strype's *Ec. Mem.* vol. II. p. 98.

* See the libel against that class, entitled, the Petition of the Beggars to Henry VIII. in the first volume of Somers' Tracts, by Scott. They are there accused of every crime.

† Burnet's Hist. of Ref. Part II. B. I. P. 83. The act referred to by him passed in 1543, is almost inhuman one, adjudging vagabonds to be the slaves of any one who presented them to a justice, for two years, and to have the letter V imprinted on their breasts with a red-hot iron. The masters were permitted by the statute to treat these slaves in a manner utterly revolting to humanity; and if any one ran from his master, and was absent for fourteen days, he was to become his slave for life, after being branded on the forehead or cheek with the letter S; and if he ran away a third time, and was convicted by two witnesses, he was to be punished as a felon with the pains of death. "A great many provisoes," says Burnet, "follow concerning clerks so convict; which shew, that this act was chiefly levelled at the idle monks and friars, who went about the country, and would betake

terludes and farces*—for begging a little bread of the charitable, to the necessity of which they had been reduced by an event which human foresight could not calculate on. This too proceeded from men who had got their lands, or from ecclesiastics of the new establishment, who were ready to exclaim against the sacrilege of touching the patrimony of the church—which, while they mercilessly divested their predecessors of it, they conceived ought still to be applied to holy uses †. But the misery attending this event did not rest here. The lands attached to religious houses were immensely extensive, and as corporations are ever the best landlords, its tenants, though numerous and holding consequently small farms, may be presumed to have been the most independent and comfortable of their class; but, now that the ground passed into other hands, where there could exist no sympathy with its occupiers, they,

themselves to no employment; but finding the people apt to have compassion on them, continued in that course of life." The prelate who could write thus, is yet ready to exclaim about the poverty of the clergy. But these were catholics, and a difference in religion with some men shuts up every avenue of compassion.

* See 1st Vol. of Burnet, p. 576, as to the stage plays.

† Strype's Mem. Vol. II. p. (261.) A strange fatality was alleged to attend those who were concerned in plundering the church. Whitgift told Queen Elizabeth, "that church lands added to an ancient inheritance had proved like a moth fretting a garment and secretly consumed both; or like the eagle that stole a coal from the altar, and thereby set her nest on fire, which consumed both her young eagles and herself that stole it." *Life of Hooker* prefixed to his Works, p. 12. fol. ed.

exclusive of any security that part of them might derive from leases, (leases were confirmed by statute,) were forced either to quit their possessions, or to submit to such an enhancement of the terms as must have blasted all their prospects *.

The melancholy tone of the statutes, the declamations of the pulpit, and of cotemporary authors, against the cruel selfishness of proprietors,—the general rage against large flocks of sheep, and against enclosures, the effect of which was to con-

* In a book entitled the Supplication of the Poor Commons, published in 1546, from which Strype extracts some passages, we have the amplest proof of this. Tenants of abbey lands were daily dismissed by the new proprietors; and such was the rapacity of the last, that the former did not derive security from their leases, though these were specially provided for in the statute. "When they," (the new proprietors,) "stand once seized in such abbey lands, they make us, your poor commons, so in doubt of their threatenings, that we dare do none other but bring into their courts our copies taken of the convents and of the late dissolved monasteries, and confirmed by your High Court of Parliament. They make us believe that, by virtue of your highness, all our former writings are void and of no effect: And that if we will not take new leases of them, we must then forthwith avoid the ground as having therein no interest. Moreover, when they can espy no commodious thing to be bought at your highness' hand, they labour for and obtain leases for 21 years in and upon such abbey lands as lie commodious for them. Then do they dash us out of countenance, with your highness' authority, making us believe that by virtue of your highness' lease, our copies are void: So that they compel us to surrender our former writings we ought to hold, some for two and some for three lives, and to take by indenture for twenty-one years, overing both with fines and rents beyond all reason and conscience."

They state that such possessors as were heretofore able, and used to bring up their children to learning, were now obliged to set them to labour, while the poorer classes could not procure work for theirs, "though they profferred them for meat, drink, and poor clothes to cover their bodies." Strype's *Ec. Mem.* Vol. I. p. 399.

solidate many farms and abridge the number of labourers,—the repeated insurrections,—the execution of seventy-two thousand rogues, great and small, even during the reign of Henry VIII. a period of only thirty-seven years and nine months, need not after this excite surprise; they were the necessary consequence of the change of manners and of the policy pursued. The evil in time effected its own partial cure; yet, even in the reign of Elizabeth, though some mitigation of the general misery was found in the poor's laws then devised*. "Thieves," says Harrison, "were trussed up apace, and three hundred and four hundred were commonly eaten up by the gallows every year." As for beggars, they were so numerous, that, observes he, though "the punishment be verie sharpe, yet it cannot restreine them from their gadding, wherefore the end must needs be martiall law †."

* The poor's laws have been productive of much mischief; but, at the time of their introduction, they were absolutely necessary: for the poor must otherwise either have perished or destroyed the rich; and the consequences were beneficial to the whole community at the time. The provision for the poor enabled them, to a certain extent, to purchase food, and being so much withdrawn from the rich, which they would have expended on foreign superfluities, obliged the latter to put more of their lands into tillage. This afforded employment to many; and as the labourers thus employed, as well as those supported by the assessments, required coarse garments manufactured at home, fresh hands would find work in supplying such articles; and these, being again in a condition to purchase food, would react upon agriculture. Some beneficial acts, to exclude foreign manufactures, and advance the home, were passed in Elizabeth's reign. *Ander. on Com.* vol. ii. 120; but the monopolies were numerous on the other hand.

† P. 184.

The general distress opened men's minds to the effects of over-population. The towns, by obtaining and enforcing exclusive privileges, and by at least concurring in general laws to prevent the influx of inhabitants from the country, and the lower ranks by their complaints of, and rage against, the employment of foreigners, discovered sound knowledge on the subject*: And we learn from Harrison directly, that the prevalent opinion in his time—he published in 1577—was, that the number of mankind was excessive. "Certes," says he, "a great number complaine of the increase of pouertie, laieing the cause upon God, as though he were in fault for sending such increase of people or want of wars that should consume them, affirming that the land was never so full†." Again, "Some affirme, that youthe by marrying too soon doo nothing profit the countrie; but fill it full of beggars, to the hurte and utter undooing, they say, of the commonwealth‡." In another place, where

* Anderson's Hist. of Com. vol. ii. The great riot in London on May day, in the reign of Henry VIII. was directed against the foreigners, who were accused by the people of engrossing the trade and manufactures of the nation, Halle, p. 59, *et seq.* By 14 and 15 Henry VIII. c. 2, aliens were prohibited from taking aliens as apprentices; and no alien was allowed to have more than two aliens as journeymen at one time.

† P. 193. The whole page presents a picture of the utmost wretchedness.

‡ Harrison, p. 205. He says, "That the twentieth part of the realm is emploied on deer and conies;" and justly remarks, "That privileges and faculties are also another great cause of the ruins of a commonwealth, and diminution of mankind: For whereas law

he treats of the causes of begging, and attributes it partly to the griping avarice of great families, who found pretexts "for wiping manie out of their occupieings," he says, "the better minded doo forsake the realme for altogether, and seek to live in other countries, as France, Germanie, Barbarie, India, Moscouia, and verie Calecute, complaining of no room to be left for them at home." "Yet the greater part commonlie having nothing to staie upon, ar wilfull, and thereupon doo either prooue idle beggers, or else continue starke theeues, till the gallowes doo eat them up *."

Having shown how the Revolution in manners affected the people, it remains to trace its consequences upon the government. During the plenitude of aristocratic power, the lower country population, possessed of independent means of subsistence, must, for their own security against aggression from great families, have sought the alliance of potent neighbours. These would generally be of the gentry, as their jealousy of the peerage would induce them to desire the support of numerous allies, that they might be enabled to withstand the influence of that body, and buoy up their own class; and they would retain the attachment of the lower ranks by procuring laws beneficial to them. But men of independent cir-

and nature dooth permit all men to liue in their best manner, and whatsoeuer trade they be exercised in, there commeth some priuilege or other in the waie, which cutteth them off from this or that trade, whereby they must needs shift soile and seeke unto other countries." *Ib.*

* P. 183.

cumstances would submit no longer to the degradation of such patronage than was requisite for their own security against injury and insult. Commines, in his time, remarked that the English people were jealous of the aristocracy; and when the change of manners had abridged the power of the higher ranks, the lower would be ready to support the throne in extending its authority, that it might fully reach a class whose influence in the community was equally hurtful to the prerogative, and subversive of the public happiness. The extensive transferences of land afterwards increased the influence of the inferior gentry, as they diminished that of the higher, as well as of the nobility: For new men, as they are most obnoxious to aristocratic pride, are commonly the most spirited in resenting insult, and the ablest to improve the natural influence of their station. Power, that threatens all alike, is not so much an object of apprehension with any particular class, as that which proceeds from a body but a little removed from itself; and the inferior country ranks, therefore, would, without calculating upon the distant problematical consequences of an undue preponderance in the crown, throw all their influence into its scale, that it might reduce the still formidable power of the great aristocracy, and raise their own respectability, by depressing those above them. The Star Chamber was the most arbitrary institution ever known in England; yet the illegal extension of its authority, during the reign of Henry VIII., must have gratified the lower ranks

as its avowed object was to bring within the sphere of justice men whose situation raised them above the reach of ordinary jurisdiction, and to teach them that their inferior neighbours should not be aggrieved without the hope of remedy.

Large towns commonly give the tone to public opinion; and these had daily obtained a great accession of strength, both by the improvements in the mode of life, and by the decay of provincial towns—while the increasing wealth of the country, and the transferences of land, rendered the citizens less dependent on any particular class of customers. If they were not, in former times, prone to support the aristocracy, who envied their prosperity, and despised their habits, they would be less so now that the change of manners made great families more sensible of any approach to rivalry in expenditure, and the citizens more apt to affect it from their increasing wealth. While, therefore, the prerogative was likely to come into contact chiefly with the aristocracy, towns would be, in most cases, disposed to support it. The literary men, too, in that age, being patronized by the crown, inclined to direct the current of public opinion in its favour.

The advantages which Henry derived, at his accession, from the state of the aristocracy, and his own personal qualities, have already been detailed; but it remains to be stated, that the disordered frame of civil society, in consequence of the dismission of dependents from estates, naturally induced the higher ranks to desire measures which,

however innocuous they might appear at the time, formed precedents dangerous to public liberty: For mankind seldom reflect upon the problematical consequences of measures which liberate them from present calamities; and neither person nor property being safe from the numerous banditti that infested the kingdom, while repeated insurrections threatened the very existence of social institutions, the people neither weighed the distant consequences of impressments which swept off the idle, nor of a resort to martial law, which promised relief from such harrassing evils. Though, therefore, speculative politicians entered their protest against the use of martial law, when it could possibly be avoided; the bodies of men, who possessed influence, frequently solicited commissions to authorise it. But it ought never to be forgotten, that these commissions were never executed, except in cases of actual insurrection; nay, the greatest legal authorities held that the execution of them under other circumstances would have been murder in the agents*: and that the aristocracy themselves generally raised the armies, while the prince was often disposed, even in cases of actual insurrection, to adopt milder proceedings towards a class whose misery he deplored. It was chiefly his clemency to the poor, and his resistance of sanguinary measures, which raised such a host of enemies against the Duke of

* See this subject discussed in the next Chapter, under the head of Martial Law.

Somerset, protector to Edward VI. as, in spite of the regal power with which he was invested, brought him to the scaffold *.

From so many circumstances, the current set in strongly in favour of the prerogative, and Henry knew how to avail himself of his situation. "It was his manner always," says Herbert, "with great industry to procure members of Parliament well affected to his service. †" He generally kept up a good correspondence with both Houses, and was seldom disappointed in his expectations but in regard to supplies, which, as they in those times deeply affected the members themselves, were granted with reluctance ‡. He had allowed himself, at one period, however, to be deceived by appearances, or to be misled by his counsellors, into the erroneous belief of a predisposition in the people to submit to any measures of the court: For he ventured to violate the fundamental principle of the constitution, by an attempt to impose a tax without the assent of the Legislature; but the attempt raised such a spirit of commotion, that he perceived the propriety of

* Strype's Ec. Mem. Vol. II. p. 152, 167, 169, 171, and 183. Burnet, Vol. V. p. 327. It would appear that some foreign troops had been entertained; but it disgusted the people. Ib. The nobility and gentry, however, seem to have been employed against the people, and they desired sanguinary measures. Strype's Ec. Mem. Vol. II. c. 21.

† P. 218. In 1614, Sir Roger Owen, member of the lower house, ascribed the fall of Cromwell (Henry's minister) to his having unduly interfered with elections. Journ. 2d May, p. 479.

‡ Burnet, Vol. I. p. 16.

recalling the warrants, and disavowing the measure *. It was in religious matters, after the commencement of the Reformation, that Parliaments, during this reign and the three following, shewed themselves inclined slavishly to adopt suggestions from the throne, and the conduct of Henry and his successors was chiefly distinguished by an arbitrary character; but when we examine the causes of that acquiescence, we discover them in the circumstances and feelings which attended the Reformation itself. As this is, however, a subject which deserves investigation, it will not be improper to enter into some detail.

Even in the darkest ages, there were instances of individuals who impugned the authority of the Popish yoke, and gained a few proselytes; but it was reserved for Englishmen to disclaim the dominion of the papal see, with the first prospect of success †. Popular movements have commonly been ascribed to the principal actors in them, as to their authors; but the utmost that can be accomplished by individuals, in such cases, is merely to avail themselves of a happy predisposition in the public mind, to give form and consistency to loose opinions, and to bring to the aid of an infant sect or party, the weight of talent, learning, and

* Holinshed, Vol. II. p. 891. Halle, 137, *et seq.* Herbert, p. 66 and 67. Burnet's History of Ref. Vol. V. p. 36 and 37, Burleigh's Paper to Elizabeth. Wolsey afterwards pretended that he merely wanted a benevolence, but he was answered with law.

† See Fox's Martyrs, Vol. I. for an account of reformers long before Wickliffe's time.

character, or station. They may thus strengthen and direct the current; but, if they be wise beyond their age, they must expect the just appreciation of their views from an enlightened posterity. Thus it happened with John Wickliffe, to whom the first grand attempt at reformation has been attributed. Previous attempts, as we have observed, had proved abortive—because the times were not ripe for a change; but the merit of Wickliffe lay in seizing the favourable moment for disseminating his doctrine. In most of his principles he had been, in a great measure, anticipated, even by writers whose names are forgotten *; but the profoundness of his learning, and greatness of his abilities, enabled him at once to take the lead, and thus gave to the sect the name of its champion. This eminent individual was reader of divinity at Oxford, and began to broach his opinions about the year 1371. His most inveterate enemies, while they endeavour to blacken his memory with the imputation of vices, and of many profane as well as ridiculous tenets, do ample justice to his great endowments; and it may be remarked, that the slander of Pol. Vergil †—that he

* Fox, p. 521, *et seq.*

† Pol. Verg. L. xix. p. 399 & 400. After having said, that, at that time, there existed many learned and brave men, he observes—Extitere et aliqui insigni infamia, quorum caput et princeps fuit Joannes Wythcliffus: is, ut fama est, à primo indignatus, quod non potuisset ad summos sacerdotalis ordinis aspirare honores, factus inde sacerdotibus cunctis inimicior, cœpit divina scripta perverse interpretari, atque novam instituere sectam, &c. The character of Wickliffe, for talents and attainments, is thus given by a cotemporary

acted from disappointment in his ambitious hopes of reaching the highest honours in the Church he abandoned—is really a tribute to his character for talent and learning. Instead of the timidity for which, at a more enlightened period, the Saxon reformer was remarkable, Wickliffe and his party at once struck at the root of the evil, disclaiming alike the supremacy of the Pope, and the tenets and practices—such as purgatory, the real presence in the eucharist, the tutelar protection of saints, the adoration of images, auricular confession, pilgrimages, the effect of baptism, the cœlibacy of the clergy, &c.—which peculiarly distinguish the Catholic superstition, and boldly appealed to the Scriptures as the only rule of faith. Qualified equally by nature and by his uncommon attainments to be the leader of the sect, he did not permit his talents to rust in inactivity; for, besides translating the Scriptures into English, he is said to have written about two hundred books, the majority of which were preserved till the sixteenth century against all the efforts of the clergy to destroy them *. That body were particularly offended at the translation of the Scriptures, by which, they alleged, the evangelical pearl was cast

historian of great credit, and who, being a monk, and an inveterate enemy, is in this respect the more to be trusted: "In philosophiâ nulli reputabatur secundus, in scholasticis disciplinis incomparabilis. Hic maximè nitebatur aliorum ingenia, subtilitate scientiæ, et profunditate ingenii sui transcendere, et ab opinionibus eorum variare." *Knighton*, p. 2644.

* Henry's Hist. Vol. VIII. p. 234.

abroad, and trodden under feet of swine. "Sic evangelica margarita spargitur et a porcis conculcatur *." His followers went about preaching the gospel, barefooted, and cloathed in russet; and, as the simplicity of their dress made a deep impression on the common people, their enemies likened them to the false prophets—ravenous wolves in sheep's clothing—of whom Christ forewarned his disciples. Their doctrine, however, attracted many amongst the high classes, and even amongst the people, from a more impure cause: for they declaimed virulently against the monastic institutions and the property of the church: and went so far as to assert, that it was not only lawful for the temporal lords and gentry, but incumbent on them, under pain of damnation, to seize the possessions of any delinquent church; and that tithes were purely eleemosynary, and might be withheld by the people upon a delinquency in the pastor, and transferred to another at pleasure †. Great

* Knighton, p. 2644. Principales pseudo Lollardi, primâ introductione hujus sectæ nephandæ, vestibus de russeto utebantur pro majore parte, illorum quasi simplicitatem cordis ostendentes exterius, ut sic mentes intuentium se subtiliter sibi attraherent, et laborem docendi atque seminandi insanam doctrinam, securius aggrederentur. De talibus, enim, loquitur dominus in evangelio docens suos cavere ab eis, ait, enim, attendite a falsis prophetis, qui ad vos veniunt in vestimentis ovium, intrinsecus autem sunt lupi rapaces, p. 2663. See also Walsingham, Hist. p. 191.

† Walsingham, Hist. p. 191. Ypodig. Neust. p. 531. Knighton gives the particular charges of heresy against Wickliffe; and by these he is accused of having gone a little farther than what is stated in our text—"quod domini temporales possunt ad arbitrium auferre bona temporalia sibi ab ecclesiâ habitualiter delinquente, *vel quod populares possunt ad eorum arbitrium dominos delinquentes corrigere.*" P. 2648.

prospects thus encouraged the higher classes t advance the infant creed; and to that motiv Walsingham attributes the success of the ne sect in obtaining so many high proselytes. "E nempe maximo, quia potestatem tribuerunt laici suis assertionibus, ad auferendum temporalia a vi ris ecclesiasticis et religiosis *." It is not so won derful, therefore, that a cotemporary monkish his torian should endeavour to blast the credit of th reformer, by alleging that he had John Balle, th friend of Wat Tyler, as his precursor, who pre pared the way for him by similar opinions. "Hi habuit præcursorem Johannem Balle, veluti Chris tus Johannem Babtistam, qui vias suas in talibu opinionibus præparavit, et plurimos quoque, doc trinâ suâ, ut dicitur, perturbavit †." Amongs the favourers and patrons of Wickliffe, were John of Gaunt, (on whom the government chiefly de volved in the old age of Edward III.,) and th Lords Percy, Latimer, Montague, &c. ‡ who ar

* Wals. Hist. p. 191.

† Knighton, p. 2644. See also p. 2655.

‡ Knighton, p. 2661. Wals. Hist. p. 328. Knighton, after men tioning that these great men patronized the sect, proceeds thus: "Is erant hujus sectæ promotores strenuissimi, et propugnatores fortissimi erantque defensatores validissimi et invincibiles protractatores. Qui *militari cingulo ambiebant ne a recte credentibus aliquid opprobrii ac damni propter eorum prophanam doctrinam sortirentur*; nam zelur dei habuerunt, sed non secundum scientiam: Crediderunt namqu vera fuisse quæ à pseudo-doctoribus audiebant, et sic vani facti sunt i cogitationibus suis, et eis similes in voluntatibus suis, factique sun cives et domestici eorum. Cumque aliquis pseudo-prædicator ad par tes alicujus istorum militum se diverteret prædicationis causa, incon tinenti, cum omni promptitudine populum patriæ convocare et ad cer

accused, by a cotemporary historian, of having served the cause with other weapons than the spiritual. When a preacher arrived at any parti-

um locum vel ecclesiam cum ingenti solicitundine congregare satagebat ad audiendum voces eorum *licet invitos*, resistere tamen vel contradicere non audentes, acsi cum prophetâ clamaret et diceret, *si eum audire nolueritis, et me ad iracundiam provocaveritis, gladius devorabit vos.* Nam assistere solent juxta sic inepte prædicantes, *gladio et pelta stipati* ad eorum defensionem, ne quis contra eos aut eorum doctrinam blasphemam aliquid temptare vel contradicere quandoque auderet. Et sic dejecto humilitatis flore, quos non potuerunt ratione, gladii timore sæpissime acquisierunt. O Christi doctrina mitis, humilis, et mansueta! O repugnans nephandorum disciplina superba, gladiata, invidiæ, *et detractionis plena!* Christi namque doctrina est, si quis vos non audierit, exeuntes excutite pulverem pedum vestrorum in testimonium illis. Istorum Lollardorum sive Wyclyvianorum disciplina longé aliter se habet. Si quis vos non audiet, vel contra vos aliquid dixerit, eximite gladium et eum percutite, aut *lingua mordaci famam* ejus vulnerate. Nam solent isti nephandi hujus sectæ doctores dicere, quod nulli eis contradicunt, nisi solum peccatores et maligni seu vitiati. P. 2661 and 2. See also p. 2664. How many are the ways of self-deception? Every sect proclaims the impiety, injustice, and cruelty of persecution; yet most are too ready to think it proper against all that oppose their particular views; and the author who could write thus was amongst the number. Wickliffe's enemies are abused by protestant writers for defaming him; yet he himself set the example. Knighton tells us, that invective and detraction were the means his sect took to advance their doctrine. See p. 2664. He is alleged to have said—"Nullus sacerdos in aliquam domum intrat, nisi ad male tractandam uxorem, filiam, aut ancillam, et ideo rogabat ut mariti caveant ne sacerdotem aliquem in domum suam intrare permittant." P. 2670. But far more flagitious crimes were imputed to the established clergy, (See Fox's Martyrol. vol. i. p. 662—book of conclusions exhibited to Parliament;) though the imputations were advanced rather as inferences from their celibacy, than as well known facts. Hence, however, we ought to distrust the stories so-industriously circulated against the religious houses at their suppression in the time of Henry VIII. When men are determined to plunder an establishment, they never fail in a pretext to justify their rapacity.

cular place, they assembled the people even against their wills, and obliged them patiently to listen to the doctrine, under the threat of instant execution. The same author tells us, that by the indefatigable industry of the sectaries and their patrons, more than half the kingdom were drawn to their party *.

England had long been tame in submitting to ecclesiastical tyranny. Livings were presented to foreigners who never entered the kingdom, whence annates, first fruits, &c.; and, by appeals to Rome, justice was obstructed, and the common law threatened with subversion †. To remedy these

* Knighton, p. 2664. The same author tells us, that the nation was convulsed with schism, and all the charities of life destroyed. Fathers were incited against their children; children against their parents, brothers and neighbours against each other, and servants against their masters. *Ib.* For a particular account of Wickliffe, his followers, and doctrine, See Knighton, p. 2644, *et seq.*—Walsingham, Hist. p. 191, *et seq.*—Ypodig. Neust. p. 531, *et seq.*—Pol. Verg. Ang. Hist. L. 19, p. 399 and 400.—Fox's Martyr. vol. i. p. 554, *et seq.*—Holinshed, vol. ii. p. 411, *et seq.*—Speed, p. 588.—Fuller's Church Hist. book 4th.—Daniel's Hist. in White Kennet. p. 232, *et seq.* This author, who was a courtier under James I., satirically remarks, that Wickliffe's "doctrine was very pleasing to great men, who embrace sects either through ambition to get, or fear of losing, or through hatred, that they may revenge themselves." Ken. Col. reigns of H. 4 and H. 5.

† See Blackstone's Com. v. 4. p. 106, *et seq.* Fox gives us "notes of the parliament holden in the 20th yeere of King Edward III." when alien cardinals, and other strangers who held livings in the English church, were ordered to depart out of the kingdom; and this is a paragraph of these notes—"That such aliens enemies as be advanced to livings heere in England (being in their own countries, shoemakers, tailors, or chamberlains unto cardinals) should depart before Michaelmas, and their livings be disposed of to poor English scholars, vol. i. p. 551; see Halle, p. 11.

evils, several laws had been early enacted; but as they had been always evaded, the statutes of provisors, premunire, &c. were passed in the reigns of Edward III. and Richard II. * The latter monarch, however, arrested the current against the church, when it proceeded to overturn the establishment, instead of correcting some of its abuses. Intent on infringing popular rights, he was fully sensible of the utility of the alliance betwixt Church and State; and well knew that, as he had already lost the affections of the people, the hostility of the clergy must prove fatal to him. He assisted the priesthood, therefore, in maintaining their ground; and published in their favour, as an act of the legislature, an ordinance of the lords merely, or rather of the spiritual part of them, against the new sect †. He was greatly enraged, too, at the book of conclusions, as it was called, exhibited to Parliament against the clergy, for a reformation, in the year 1395, during his absence in Ireland; and, on his return, compelled some leading men, by threats, to abjure their tenets ‡.

As Henry IV. was raised to the throne by

* The first act against papal provisions, and which was the foundation of all future statutes against this abominable usurpation, was 35th Ed. I. See Coke's 2d Inst. Stat. De Asport. Religios. P. 580. The other statutes are likewise commented on under this head. See also 3d Inst. of premunire, and Blacks. Com. Vol. IV. p. 107. *et seq.* The Pope condemned the statute of premunire as "*execrabile,*" and called the passing of it "*fœdum et turpe facinus.*" Ful. Ch. Hist. p. 148. Wh. Ken. vol. i. p. 270.

† Burnet's Hist. of Ref. Vol. I. p. 44. Edn. 1816. See Commission against the Lollards in Holinshed, p. 483.

‡ Hol. p. 483. Wh. Ken. p. 272.

the popular voice, people were flattered with the hope of greater compliance with their wishes; and, besides that the conspicuous part which his father had taken in regard to Wickliffe, induced them to expect a similar predilection from him, he had been formerly heard to say, that princes had too little, and the clergy too much *. On that ground alone, an insurrection, instigated by a favourite ecclesiastic of the late king, who circulated that Henry meant to attack the temporalities of the church, was raised against him at the beginning of his reign. But he had now, as monarch, a different interest, while his precarious tenure of the throne, and the state of parties, appear to have forced him into fluctuating policy. He had been greatly indebted to some eminent ecclesiastics for raising him to the throne †; and their active ascendancy at first seems to have operated strongly in the elections of

* Grafton, p. 409. Halle, fol. 11th. Holinshed, Vol. ii. p. 514. Hayward's Life of Henry IV. p. 254. Ken. p. 277.

† Thomas Arundel, Archbishop of Canterbury, who had been banished by Richard, was one of the principal conspirators for deposing that monarch and substituting Henry. Scroop, Archbishop of York too, and other ecclesiastics of great note, were very instrumental. See Hayward's Henry IV. Wals. p. 358. and 360. Fabian, 7th part, p. 153. Holinshed, p. 495. *et seq.* Ken. p. 282. *et seq.* Grafton, p. 398. Fuller's Church Hist. B. iv. p. 153. This writer is, however, a little satirical against the clergy, for he does not scruple to use these words: "Thus, in all state alterations, the pulpit will be of the same wood with the council board." All the prelates, &c. embraced the side of the victorious Henry at the outset, except the Bishop of Carlisle, who was attached of treason for his speech against the deposing of Richard. See Ful. as to the cause of Henry's persecution of the Lollards, p. 155.

the Commons. Before the government had acquired some stability, and while the deposed Richard was still alive, or believed to be so, they only would chuse to stand forward as legislators who had decidedly taken a part in the transactions, and union with the prelates was necessary for their safety. This accounts for the law which was passed in the 2d of Henry IV. against the Lollards, being the first that authorized the burning of heretics *. But in the sixth of the same reign, the Lower House, in a parliament held at Coventry, shewed itself composed of such opposite materials, that it boldly projected the transference of the Church property to the crown. The kingdom was at this time threatened with war by the Scots and Welsh at home, and by the French, Flemings, and Britains from abroad; and though at a parliament which had been held this very year at Westminster, so unusual a tax had been imposed that the two houses thought it expedient to destroy the record of it, that it might not exist as a precedent against them †, a great supply was still required for the public exigencies; and the Commons seized

* Burnet, Hist. of Ref. Vol. i. p. 45.

† Wals. Hist. p. 369. "In hoc parliamento concessa fuit regi, taxa insolita, et incolis tricabilis et valde gravis. Cujus modum presentibus inseruissem, nisi concessores ipsi, et authores dicti tallagii, in perpetuum latere posteros maluissent: nempe sub eâ tantum conditione concedebatur, ne traheretur posterius in exemplum, nec servarentur ejus evidentiæ in thesauria regia, nec in scaccario, sed scripturæ vel recordationes ejusdem protinus post datum compotum cremarentur. Nec emitterentur brevia seu commissiones contra collectores vel inquisitores hujus negotii de melius inquirendo." See also Ypod. Neus. p. 561.

the favourable juncture for proposing a grand blow against the ecclesiastical property.

Both houses had, by way of conference about the posture of affairs, as it would appear, been assembled in the royal presence; where the Commons complained that, while they not only supplied the king's necessities against all his enemies, whether internal or external, but exposed their persons to the privations and dangers of war, the clergy did nothing for the king, spending their revenues in idleness and sensuality at home; and, therefore, they proposed that the property of the church, which was a third of the kingdom, and might afford a revenue amply sufficient for all the exigencies of government, should be appropriated to the Crown. A great altercation immediately ensued with the spiritualty; and the primate, in defence of the church, answered, that the clergy were unjustly accused of not supporting the throne, for that they were more liberal in their grants than the laity, frequently giving tenths when the other only gave fifteenths: that, though their calling prevented them from personally attending the king in his wars, they as effectually served him even there, by means of their tenants, who took the field in greater numbers than those of the laity; and that themselves were in the meantime day and night employed in his service by imploring the divine favour upon all his undertakings. The prolocutor of the Commons, Sir John Cheney, (who is said to have been once in deacon's orders, but to have deserted the church for the camp, and to have

been actuated by the feelings of an apostate,) made some contemptuous remarks upon the prayers of the clergy, which provoked a severe reprehension from the archbishop, who told the Commons, that no state could stand without religion; but that since piety could not restrain them from so sacrilegious a project, prudence ought, as they might find that the Church could make a powerful resistance, and he warned them that, while Canterbury lived, its patrimony should not be wrested from it without a struggle. Then approaching the king, who had appeared to assent to the proposal of the Commons, and falling on his knees, he reminded the monarch of his oaths to preserve the church, and of his duty to that heavenly king by whom earthly ones reign. Henry desired the archbishop to return to his seat, assuring him that he had no intention to plunder the church, but would leave it greater than he found it. Thus encouraged by the assurance of the royal favour and protetion, the primate again addressed the Commons, telling them that they in vain thought to deceive him by veiling their unprincipled cupidity under the cloak of supplying the wants of the Crown, for that even past events had sufficiently evinced that it was not the public service which they intended to promote by such a proposal: that they, and such as they, had, under the same pretext, advised the king and his predecessors to seize upon the property of the small religious houses of French and Norman friars within the kingdom; but that the Crown had not been in the slightest degree enriched by such pro-

perty, as these advisers had never ceased to beg or extort it till they had got it all: and that he would predict, that, were the present sacrilegious proposal acceded to, the monarch would not be one farthing richer by the year's end. But, continued he, "sooner will I part with this head from my shoulders than that the slighest encroachment shall be made upon the church's patrimony." The Commons made no reply; but on their return to their own house, they were not diverted, either by what had fallen from the throne, or by the threats of the archbishop, from a keen prosecution of their purpose. To oppose every barrier to such a scheme, the archbishop successfully courted the support of the temporal Peers, with whose alliance the clergy effectually resisted the project; and the Commons having granted two-fifteenths, under condition of its being entrusted to Lord Furnival, &c. to be expended on the particular service for which it was required, and having recalled some annuities which had been given to individuals by the king, affected regret for their sacrilegious attempt, and promised not to renew it *.

In assisting the clergy to repress the schemes of the Commons, the Lords are said to have only made a return to the spiritualty for supporting them in the rejection of bills, both in this and pre-

* Walsing. Hist. p. 371. Ypod. Neus. p. 563. Holinshed, Vol. II. p. 526. Ken. p. 290. Hayward's Hist. p. 254. Cob. Parl. Hist. Vol. I. p. 295.

We have in the present grant by the Commons, a proof of the condition on which money was so often given. Walsingham states the fact without thinking it worth a remark.

ceding parliaments, to resume for the Crown all its grants to the peerage, whether during the present reign or the two preceding; but it is easy to perceive, that they were probably influenced by a nearer interest. They had originally patronized the Wickliffites, from the hope of sharing liberally in the temporalities of the church; but the ambition and boldness of the Commons, which not only disdained to act in concert with the peerage, but by attempting the resumption of royal grants *, betrayed an indifference about offending them, were calculated to alarm that body, and, at all events, to alienate them from any attempt upon church property. For, if the Commons were really actuated by the selfish motives imputed to them by the primate, it is quite evident that the same confidence in their own strength which, in attempting the measure, made them negligent of co-operation with the temporal peers, would lead them to anticipate all its fruits for themselves; and it cannot be denied that, had their confidence in the first been well-founded, they could scarcely have failed in the last. But the peerage had cause also to suspect that the monarch favoured the views of the Lower House, and consequently that he intended to distribute the property amongst the Commons, which

* It was quite a common practice for parliament to resume the royal grants; (See Prynne's preface to Cotton's Abridgment of the Records, where he gives many instances of it, and refers correctly to many authorities) but when the Commons were grasping so greedily at the church property, it afforded no favourable augury of their intentions towards the Lords that they pretended to be so deeply affected by the public interest as to recal the paltry grants from that body.

would give that body a preponderance in the state equally injurious and dangerous to the pre-eminence of the nobility *.

Henry had the prospect of a grand game. The popularity which raised him to the throne, deserted him the instant it had seated him there; and his government was daily threatened with plots and insurrections, which, if successful, would not merely have dethroned him, but, in all probability proved fatal, alike to himself and his family. To prop this tottering dynasty, nothing could be more effectual than the distribution of vast property amongst such a numerous body as could muster a strength ready at all times to crush every attempt at rebellion; for, owing their property to a particular family, they could not expect to retain it upon a change of dynasty, when the authors of this greatness were branded, and punished, as usurpers. The church, however, possessed about a third of the national territory, and that,

* It may be asked by some unreflecting reader, why Henry did not desire the transference of church property to the crown, that he might retain it? But the answer is obvious: he knew that it was utterly impracticable. The church was not only powerful in itself, but, according to the highest computation which appears to have been made of the Lollards, had about half the kingdom to support it. Its property, therefore, could not have been taken without a violent shock; and though the Commons were anxious to give it to the Crown in trust for themselves, that it might be distributed amongst them, they would have probably joined the ecclesiastical body in recalling it, had their hopes been disappointed; at all events, the king never would have been supported in what, by giving such an overwhelming preponderance to the crown, threatened the whole community, and then inevitable ruin must have awaited so foolish a step.

judiciously distributed, promised to establish the present dynasty beyond the fear of fall. Though this view has not been ascribed to Henry, some parts of his conduct, as well as the proposals of the Commons, which were afterwards more systematically made, indicate that he had entertained it, and only protected the church when he perceived the impracticability of plundering it. There had been a statute or ordinance passed in the 46th of Edward III. A. D. 1372*, to render lawyers ineligible to the Lower House, on the ground that "they procured and caused to be brought into Parliament, many petitions in the name of the Commons, which in no wise related to them, but only to the private persons with whom they were engaged;" but it does not appear to have been acted upon till Henry, upon summoning the parliament in question, directed the writs, with a clause of *nollumus*, against the election of that class, alleging that, at the previous parliament, the lawyers had needlessly protracted the business†. However the

* See late Pub. of St. of the Realm. Prynne was at pains to prove that statutes and ordinances are synonimous. But it was unnecessary, as both are acts of the legislature.

† This parliament was styled in derision the *Parliamentum Indoctorum*. Wals. Hist. p. 371. Ypod. Neus. 563. Walsingham mentions only the shires in speaking of the clause of *nollumus;* but Holinshed mentions cities and towns also, Vol. 2d. p. 526. Sir Ed. Coke, 4th Inst. p. 10, alleges that Walsingham was deceived, for that there is no such clause in the writs; and that the matter was accomplished by letters directed to sheriffs, &c. by pretext of an ordinance in the Lord's House, 46th Ed. III. But Prynne, by quoting the words of the writs, proves that Walsingham was correct; and he properly shews, at the same time, that the 46th Ed. III. was not an ordinance of the Lords, but an act of the legislature. It

interests of the clergy, and of the legal profession, might occasionally clash, there were many strong bonds of connection between them. The extent of the church property, under the dominion of a body who were actuated by the spirit of a corps, gave the clergy great influence over the lawyers, in the way of employment, during an age in which there was so limited a field for talent and enterprize. In more ancient times, many of the clergy not only acted as barristers *, but

is curious, however, to observe, that while Prynne is mercilessly correcting Coke, he has fallen himself into a very strange blunder, for he ascribes the taxa insolita et tricabilis to the Parliamentum Indoctorum; and, after citing Walsingham's words about excluding the lawyers, he proceeds thus, "to which he subjoins in his Ypodigma Neustriæ, this observation: In hoc parliamento concessa fuit regi taxa insolita, &c." Now the passage in the Ypodigma is an exact transcript of one in the history upon that very subject; and had Prynne done more than just turn up the book for this insulated point, it is inconceivable that he should not have observed this, and also that the unusual tax was granted by a parliament held at London or Westminster, while the tax by the lack-learned parliament (which was held at Coventry) is quite an ordinary one, and distinctly specified. Prynne's error is the more strange, that Holinshed and other historians who transcribe from Walsingham, do not fall into it. But it is curious that Whitelock had committed the same mistake in a speech which he has preserved in his Memorials, p. 431: As his object was, however, by that speech to dissaude the long parliament from rendering lawyers ineligible, it is possible that the error was a voluntary one. He states that Henry adopted the measure because he knew that the lawyers would oppose any extraordinary grant of money; but that class are not commonly so very patriotic. I presume that Prynne derived his error from Whitelock; or that, as Prynne's works are numberless, Whitelock may have scraped it from some of them. *N. B.* The part of Prynne's works alluded to is his preface to Cotton's Abridgment of the Records.

* Henry, Vol. VIII. p. 189. This author ascribes the statute 46 E. III. which rendered lawyers ineligible to Parliament, to the disgrace into

members of that profession were frequently promoted to the various judicial departments *, while the greatest legal office was still invariably bestowed upon an ecclesiastic †. Independently of these circumstances, it was, obviously, the interest of the lawyers to protect the church, in order that they might, by its assistance, occupy a respectable ground against the aristocracy—particularly, as from their own inability to serve the prince in a military capacity, they could not expect to derive any advantage from the ruin of the establishment. Hence a strong inference arises that Henry was anxious, on account of their predilection, to exclude them from a voice in the decision of so important a point. When, along with this, it is considered that he heard the proposals of the Commons with apparent assent, the idea acquires great confirmation. But, then, the church was powerful enough to make a desperate struggle, and the temporal peers having been alarmed into a junction with the spiritual, the measure could not have been attempted without the most tremendous convulsion, nor, as the upper house refused its assent, without violence to the first principle of the government.

With Henry's situation, half-measures were incompatible, and having declared against a measure

which the profession was brought by the chivalrous spirit of the age, so that few men of probity and credit would enter into it, Vol viii. p. 148. For this he quotes Cart. Vol. ii. p. 482. But a very different reason is assigned for their exclusion in the statute itself; and the very circumstance of their having been so often elected, is the most irrefragable proof of their general respectability.

* 2d Inst. p. 264. † Henry, Vol. x. p. 76. Vol. xii. p. 227.

which appeared to have been visionary, he endeavoured to conciliate the clergy, and affected to testify his abhorrence at the project, by persecuting the Lollards *. But the failure of one attempt, and the conduct of the king, did not deter the Commons from a second, in the eleventh of the same reign, when the project was reduced to a more regular form. In their bill, introduced by Sir John Oldcastle, Lord Cobham, a proceeding which created such animosity against him on the part of the clergy as afterwards brought him to the stake †, the Commons set forth that, while the laity sustained the burthens and dangers of the wars, the revenues of the church were lewdly spent by bishops, abbots, and priors, &c. but that those revenues might be converted to better purposes, and ought, therefore, with that view to be transferred to the king;—that out of them fifteen earls, fifteen hundred knights, and six thousand two hundred esquires might be created with ample revenues, while, from the same source fifteen thousand parish priests, who would more regularly perform the duties of their sacred function than the present clergy, might be adequately supported, and a clear revenue besides of L.20,000 per annum be reserved by the Crown. This attempt was equally unsuccessful with the former, and Henry is said to have gratified the clergy by checking the Commons for their sacrilegious project, and refusing a bill for the abrogation, or, at least, mitigation of the statute passed

* Fox's Martyr. Vol. I. † Parl. Hist. Vol. I. p. 310.

in the 2d of his reign against heretics, declaring that he wished the law to be more severe; and also another to have clerks convicted of crimes committed to the king's prison instead of the bishop's, from whence they were often allowed to escape *. In spite of this second failure, the Commons made a third and last attempt in the next reign,—only four years posterior to their former. Their pertinacity, together with the suspicions which the clergy entertained of the young king's propensities, dreadfully alarmed that body: "the fat abbotes swet," says Halle, "the proude priors frouned, the poore friers cursed, the sely nonnes wept, and al together wer nothyng pleased nor yet content †." To di-

* Wals. Hist. p. 379. Ypod. Neust. 570. Hol. Vol. ii. p. 536. Fabian's Chron. 3d part. p. 189. Kennet, p. 298. Parl. Hist. Vol. I. p. 309. In this last, an error of Rapin is corrected, who says that 150 instead of 15 earls were specified as capable of being created from that fund; and it is observed that Rapin quotes Walsingham for his authority, who distinctly states fifteen, and that the funds were totally inadequate to 150 at the rate proposed. But the fact is, that Holinshed fell into the same error, and that Rapin had derived his information from him instead of the original. In giving an account of the bill brought into parliament in the 2d Hen. V. however, Holinshed correctly states fifteen.

† Halle, H. 5. fol. 4. This author is too severe upon the monkish ecclesiastics. "You must understande," says he, "that these monasticall persones, lerned and unliterate, better fed than taught, toke on them to wryte and regester in the boke of fame, the noble actes, the wyse doynges, and politike governaunces of kynges and prynces, in whiche cronographye, yf a kinge gaue to them possessions, or graunted them liberties, or exalted them to honor and worldly dignitie, he was called a saynct, he was praised without any desert aboue the moone, hys genealogie was written, and not one iote that might exalt his fame was ether forgotten or omitted. But if a Christian prince had touched their liberties, or claimed any part justly of their

vert the country from such a plan, the archbishop advised the king in open parliament to assert his right to the French throne; and the device, happily according with the warlike bent of the monarch, as well as dazzling the people with the prospect of such an extensive foreign conquest, withdrew public attention from the project of plundering the church, and the measure was never agitated again *.

possessions, or woulde haue intermitted in their holy francheses, or desired ayde of them against his and their common enemies; then tongues talked and pennes wrote that he was a tirant, a depressor of holy religyon, an enemy to Christe's churche and his holy flocke, and a dampned and accursed persone with Dathan and Abiron to the depe pitte of Hel. Whereof, the proverbe began, geue and be blessed, take away and be accursed." Hen. IV. fol. 11. Had the author looked a little abroad into the conduct of other classes, he would have had more charity for the poor monks.

* Holinshed, Vol. ii. p. 545. *et seq.* Ken. p. 312. *et seq.* Parl. Hist. Vol. I. p. 324. *et seq.* See also Fox's Martyr. about taking the temporalities of the church. There had been publications to that effect, Vol. i. p. 711. After the conviction of Sir John Oldcastle, (commonly called Lord Cobbam by courtesy, in consequence of his having married the heiress of that family,) which took place in the 1st H. 5., there was a slight insurrection in his favour, which gave a great advantage to the ruling party. Wals. Ypod. Neust. p. 576 & 577. For an account of Oldcastle, see Fox's Martyr. Vol. I. See also Howel's State Trials, Vol. i.

The clergy laboured to alarm the prince, and also the nobility, into the belief that the Lollards would have all things in common; at all events, that the measures of that sect would disorganize society. This appears particularly from the charge against Wickliffe of his having had John Balle as a precursor, and from the ordinance of the Lords, 5 R. II. which was obtruded upon the nation by that king and his clergy as an act of the legislature; wherein it is said of the Lollards, "these persons do also preach divers matter of slander, to endanger discord and dissention betwixt divers estates of the realm, as well spiritual as temporal, in exciting the people to the great pearl of all

We have been the more particular in relating this plan of seizing upon the temporalities of the church, both because it gives an insight into the springs of action under the most momentous circumstances, and because it completely disproves the view taken by Mr. Hume, of the estimation in which the Lower House of Parliament was held at this period. That branch of the legislature which could have the boldness to conceive, and the spirit to persist in such revolutionary schemes, was unquestionably not devoid of influence, or unimportant in the constitution.

The doctrine of Wickliffe penetrated into other countries, particularly into Bohemia, where it diffused itself widely in spite of every effort to suppress it, even by the way of croisade at the instigation of the Pope; but in England, as the aristocracy renounced all concern for it, when they despaired of obtaining the temporalities of the church, and as the new sect were exposed to severe laws and violent persecution, it declined till similar tenets were revived in a new form under

the realm;—they maintain their errors by strong hand and by great rout." See late publication of statutes of the realm, Vol. ii. p. 25, &c. But it is needless to multiply authorities. As Oldcastle, who brought the bill into parliament against the clerical property in the 11th of Henry IV., sealed his faith with his blood, it may fairly be concluded that he was actuated by pure principles; and an inference may thence arise in favour of his coadjutors; but they, far from giving a similar testimony in their own favour, deserted their creed when they could not carry their measures, and he, in all probability, acted as much from the conviction that he never could accomplish his object without holding out such a bribe to the laity, as from enmity to the possessions of the church.

Henry VIII. The human mind is so moulded by the circumstances in which it is placed, and so readily imbibes the current opinions, that, if a change in religion do not proceed rapidly, it commonly fails. The doctrine becomes antiquated; zealots meet with no encouragement from public applause; and persecution, which in the burst of enthusiasm, would have created proselytes by attracting a generous sympathy towards the martyrs, and consequently arming them with every sentiment that inspires fortitude under suffering, comes then accompanied with all the freezing feelings of general reprobation and despair of the cause.

The powers with which the clergy were armed by the legislature, for the suppression of heresy, enabled them to extend their authority, by confounding legal exertions against their usurped privileges, with attempts to disclaim the jurisdiction, and impugn the soundness of the church; and their arrogance, rapacity, and oppression, seem to have been almost unlimited *. The charge of heresy was resorted to against every one who denied them the most profound reverence, or resisted their unjust demands; while their pleas of sanctuary and of clergy obstructed the criminal justice of the kingdom. Every reader of history knows, that the clergy tried to exempt, not only their own body, who were actually in orders, but all who could read, and demand the privilege of

* Halle, 188. Holinshed, 911. One priest had often ten or twelve benefices.

that sacred class, from the ordinary jurisdiction; and the alarming height to which their insolence, and the privilege pleaded by them, were carried, are exemplified in what occurred during the reign of Henry VIII. In the preceding reign, a statute was devised to draw a distinction between mere lay scholars, or men who could read, and clerks actually in orders; by which the first were subjected to a slight punishment for crimes, and prevented from pleading the benefit of clergy a second time; but the act did not pass without censure from the church. By the 4th Henry VIII. c. 2. the benefit of clergy was denied to murderers and robbers who were not in holy orders; but the law was so deeply resented by the priesthood, that they publicly branded it "as an act contrary to the law of God and to the liberties of the holy church; and it was maintained that all who had assented to it, as well spiritual as temporal persons, had incurred the censures of the church*." The case of Richard Hunne, a merchant taylor in London, during the same reign, affords a melancholy proof of the use they made of the power with which they had been entrusted for the extirpating of heresy. He had been questioned by a clerk of Middlesex for a mortuary pretended to be due for a child of his that had died at five weeks old; and as he resisted the demand, he was sued for the sum before the ecclesiastical court. In this predicament, he con-

* Burnet, Hist. of Ref. vol. i. p. 21, *et seq.* Book I.

sulted counsel, who advised him to prosecute the clerk in a premunire for bringing him before a foreign court, which the spiritual court then was, as it sat by authority from the Pope's legate. A measure which struck so sensibly at the pretensions of the priesthood, provoked them to such a degree, that they immediately attacked Hunne on a charge of heresy, and imprisoned him in the Lollards' tower. The poor man was soon found strangled in jail; and a jury having sat on the body, acquitted it of suicide, and charged the servants of the clergy with murder; but the verdict did not restrain the clergy from showing their pitiful malice upon the corpse. They sat in judgment on it; and having convicted it of heresy, delivered it over to the secular power to be burnt —a ceremony which was performed with all solemnity in Smithfield; and they, at the same time, abused the jury as false, perjured caitiffs, and interposed with the king to prevent an inquisition into the murder *. These proceedings, while they evince the extravagant pretensions and atrocity of the clergy, also, in the train of events, proved their folly. The Reformation by Luther soon began to convulse Europe; and circumstances of so crying a nature roused the attention of Englishmen, while the nobility and gentry, who complained grievously of the extortions of ecclesiastics †, were ready to embrace an opportunity to

* Burnet, Hist. of Ref. p. 24, *et seq.*

† Halle, p. 1880. Strype's Ecclesiastical Memorials, vol. i. p. 129.

compensate their losses by a general plunder of the establishment.

Henry had early, by his polemical writings against Luther, distinguished himself as a champion of the church, and been complimented by his holiness with a rose, &c. and with what he valued more dearly, the title of Defender of the Faith *. But enraged afterwards at the shuffling policy of the Pope in regard to the lawfulness of his marriage with his brother's widow, he cast off the Romish yoke. The measure accorded with the views of a great part of the kingdom; but of these a large portion were as yet incapable of renouncing the tenets of that superstition which was entwined with all their dearest principles; and even the wisest men were startled at the idea of any national change of religion, on account of its political consequences, of which the previous history of mankind could not afford great assistance in predicting the issue, though it warned them against the attempt. Of the favourers of reformation at the outset, the larger portion were rather actuated by an aversion to the clerical ascendancy and exactions, than by the fervour that soon took possession of them; and they followed the opinion of lawyers, who maintained that the king, in asserting his supremacy over the church, merely resumed the ancient right of the crown.

* Burnet was of opinion that this book was not composed by Henry, though he had the meanness to take the credit of it. See Part III, Book 3, vol. v. p. 295. Pope Leo wrote to that Monarch, "that it appeared the Holy Ghost assisted him in writing it. P. 30, vol. v.

The failure of Wickliffe's attempt at reformation had thrown such an odium upon his doctrine, that, on the second dawn of a more liberal age, people were deterred from recurring to his tenets, and therefore regarded the Saxon reformer, who followed his great precursor in England at a vast distance, as the original apostle of true religion to whom they must look for instruction. Luther began with attacking the sale of indulgences, and, at that time, entertained no idea of impugning the papal supremacy. It was only after much ill treatment that he conceived the boldness to inquire into the nature and origin of a power which exacted such unlimited dominion over the human mind; and, even then he proposed to submit all his disputes to the decision of a general council *. When that was denied him, he indeed renounced the established church; but he never abandoned the fundamental points of doctrine in which he had been bred. The corporeal presence of Christ in the sacrament, the efficacy of images, &c. were amongst his favourite tenets; and the church which he founded retained the same principles. That portion of the English people who considered Luther the genuine author of reformation, and still clung to the old doctrine, were alarmed at the idea of any spirit of inquiry going abroad, and disposed

* Mosheim gives the best account of Luther; but he wishes it to appear that the reformer had a nice distinction about a council, which should be of the universal, and not of the Popish church. But the Popish was then the only Christian church, except the Greek, which Luther surely never meant to appeal to.

government in repressing it. Indeed such a result was the natural consequence of the intolerance of each sect in that age, however [illegible] number: for each, as it arose, conceived itself entitled to obtrude its creed, by every means, upon the rest of the community; and they who were in power could not be greatly condemned for acting under the dominion of principles which they were daily taught by all parties. Those, who regarded the first movements as merely introductory to a purer system, would also be inclined, though for a different reason, to adhere to the crown, lest Henry, as the head of the reformation, should, by ill-timed contradiction, be provoked into a relapse—when, from the larger number of the Catholics, he might, by joining with them, yet crush the attempt to depart from the corruptions of former times. Even the prudent part of the Catholics themselves, whose zeal would make them conceive the present heresy to be temporary, would be cautious in offending the king, lest they should irritate him into throwing himself yet more upon the adverse party, when, in all likelihood, greater changes would be contemplated, and a return to the ancient faith, which was still held up to reverence by the retention of so much of its doctrine, and many of its ceremonies, might be rendered almost impracticable.

But many circumstances connected with the former attempt at reformation, and the late effects of religious innovation on the Continent, had contributed now to inspire fear and amazement. The opi-

nions of Wickliffe had penetrated into Bohemia about the close of the fourteenth century; and under the auspices of John Huss, who was burned as a heretic in 1415*, had diffused themselves widely. The Hussites, for the new sect was known by that name, divided themselves into two parties,—the one called Calixtines, from their insisting upon the cup or chalice, in the celebration of the Eucharist,—the other, Taborites, from the name of a well known mount in sacred writ†: The first are represented as having been gentle in their manners, and modest in their demands; the other, as the wildest enthusiasts, whose conduct threatened the dismemberment of society. The Taborites expected that Christ would descend in person with fire and sword to extirpate heresy and purify the church. "It is," says Mosheim, "this enthusiastic class of the Hussites alone that we are to look upon as accountable for all those abominable acts of violence, rapine, desolation, and murder, which are too indiscriminately laid to the charge of the Hussites in general, and to their two leaders, Ziska and Procopius in particular. It must, indeed, be acknowledged, that a great part of the Hussites had imbibed the most barbarous sentiments with respect to the obligation of executing vengeance on their enemies, against whom

* See Mosheim, vol. iii. p. 406, *et seq.* Lond. edit. 1811, for an account of this reformer. He owed his death, in a great measure, to his having embraced the side of the Realists in their absurd disputes with the Nominalists, which were carried to the most extravagant height.

† Id. p. 448–9.

they breathed nothing but bloodshed and fury, without any mixture of humanity or compassion *. The emperor Sigismund, having succeeded to the throne of Bohemia, attempted to suppress them, and in the year 1420, they flew to arms, when the acts of barbarity that were committed on both sides "were shocking and terrible beyond expression; for, notwithstanding the irreconcileable opposition that existed between the religious sentiments of the contending parties, they both agreed in this one horrible point, that it was innocent and lawful to persecute and extirpate with fire and sword the enemies of the true religion; and such they appeared to be in each others eyes †." Not to mention other insurrections in later times, we shall only advert to the wild and horrible commotions in various parts of Germany, where the pea-

* Mosh. vol. iii. p. 450. The author has added a note to the text, in which he says,—"From the following opinions and maxims of the Taborites, which may be seen in the *Diarium Hussiticum* of Byzinius, we may form a just idea of their detestable barbarity:—'Omnes legis Christi adversarii debent puniri septem plagis novissimis, ad quarum executionem fideles sunt provocandi.—In isto tempore ultionis, Christus in sua humilitate et miseratione non est imitandus ad ipsos peccatores, sed in zelo et furore et justa retributione.—In hoc tempore ultionis, quilibet fidelis, etiam presbyter, quantumcunque spiritualis, est maledictus, qui gladium suum corporalem prohibet a sanguine adversariorum legis Christi, sed debet manus suas lavare in eorum sanguine et sanctificare.' From men who adopted such horrid and detestable maxims, what could be expected but the most abominable acts of injustice and cruelty?"

† Id. p. 447. A great number of other sects arose, or still maintained their principles about this time, in different quarters of Europe. P. 461. *et seq.*

sants, rendered desperate by oppression and cruelty, rose in a body, declaring themselves unable longer to submit to their condition. How, as might have been expected of men whom oppression had kept in ignorance, and cruelty made ferocious, they were incapable of adopting measures calculated to secure the rights of humanity in future, many of them vainly imagining that their safety depended on extinguishing the rights of property with all established institutions,—a result to which they were led by deducing all their evils from these sources. To complete their misguided fury, religion mingled with their other passions, and was carried to the highest pitch of fanaticism —a circumstance which cast obloquy on the cause of reform, and alarmed princes and the higher ranks throughout Europe *. Of this the Catholics did not fail to make a proper use, their cry, according to Bishop Jewel, who flourished in the beginning of Elizabeth's reign, being "these men," meaning the reformers, "be rebels, they would have no magistrates, they would have all things in common. Behold what they have done in Helvetia; behold what they have done in Germany. Look out your Chronicles; you shall find all the uproars and seditions which have been these forty years stirred up by some of them †." Under the

* Mosh. vol. iv. p. 64. *et seq.*; 423. *et seq.*

† Jewel's Works, Ed. 1611. p. 178. Wolsey, in his last moments began an exhortation to take heed of the Lutherans, by the example of those of Bohemia, lest they should likewise subvert the secular power. Herbert, p. 148. Halle says, that 100,000 rose up in Germany. P. 142.

influence of such panics, and observing that new sects daily sprung up from the lower classes, while each teemed with mortal intolerance towards all others, as if it derived exclusive authority from heaven,—the higher ranks, who were impatient at the papal yoke, were much disposed to trust the reformation to the government, particularly to the king, as its head as well as leader of the reformation, and to strengthen the executive, that it might direct the current, lest the spirit of fanaticism, emerging in a variety of shapes, should, with the fury of a hurricane, sweep before it all the established orders of society *.

The aristocracy seem, at the outset, to have meditated the plunder of the church, and delusive hopes as to exemptions from tithes encouraged many in all classes to proceed with the great work of reformation. The aristocracy were not disappointed: For the religious houses being dissolved, the larger portion of the immense territory belonging to them was either given away by the king to favourites, or sold at low rates to the nobility and gentry of the several counties. This, at once, bound men of greatest influence to the interest of the crown, and obliged them to support the measures proposed to them from the throne, lest, before their rights were confirmed by time, the sovereign should be provoked to throw himself back into the arms of the Catholics, and

* The Papists alleged that there were no fewer than 34 sects in England. Jewel's Works, p. 406.

with their assistance recover for the church the property of which she had been plundered.

Opposition was to have been expected from the clergy; and from their numbers in the upper house of parliament, it might have retarded the grand change. But an advantage was taken of them, which reduced them to the necessity of acquiescing in the first movements; and by such means, not only brought them more under the influence of the crown in all subsequent measures, but taught them the folly of contending with the stream. Wolsey, as he had violated the statutes against purchasing bulls from Rome, by those for his legantine power, which he had exercised for years, had incurred a premunire, for which he was prosecuted; and though he might have alleged, with truth, that his royal master had instigated him to that very proceeding which he now so severely visited in the form of law, he more prudently pleaded ignorance of the statute, and submitted to the royal mercy. He was, by sentence of the court, declared to be out of the king's protection, and to have forfeited his goods and chattels, and even his personal liberty. But Henry retained some kindness for his former favourite, and allowed him to retire with the means of supporting a splendid establishment*. The blow

* Herbert, p. 124, *et seq.* See in p. 124 an account of the Cardinal's splendid furniture. Burnet, vol. i. p. 146, *et seq.* Lord Burleley, in a State Paper to Queen Elizabeth about favourites, says of Wolsey, that he had a family equal to that of a great prince. There were in it one Earl, and nine Barons, and about a thousand Knights;

against the cardinal was followed up by another against the whole clergy, as accessory to his crime, by submitting to his usurped power. Having been regularly convicted of this offence, they submitted to the king's mercy; and Henry availed himself of his situation to exact rigorous terms for sealing their pardon: 1. That the two provinces of Canterbury and York should pay into the Exchequer £118,840—an immense sum in those days; and that the whole clergy should acknowledge him to be sole, and supreme, head of the church under Christ. The first condition was instantly complied with; but the second was demurred to, the clergy contending that a layman could not be properly styled the head of a spiritual establishment, till the king told them that he claimed the title only in so far as it was agreeable to the word of God; and, with that qualification, they assented. In a year or two afterwards, however, he obtained a confirmation of his title, both in parliament and convocation, without the qualification *. The spiritual peers out-numbered the temporal; but the

and, (Burnet, vol. v. p. 36,) this is confirmed by his defence, as preserved by Godwin. Rer. Ang. Annal. lib. i. Ang. 1529. In performing divine service he had even dukes and earls to give him the water and the towel. Burnet, Hist. of Ref. vol. i. p. 35. The practice of great men having the sons of good, nay of the highest families as servants, was quite common. Mr. Galt, in his Life of Wolsey, p. 160. has fully shown the error of Mr. Hume on this subject. For an account of Wolsey's fall, &c. see Strype's Ecclesiastical Memorials, vol. i. c. 15, and 16. What a fall to the cardinal; his household reduced so low as to about 160! Herbert, p. 147.

* Herbert, p. 151, *et seq.* Burnet, vol. i. p. 204, *et seq.* Neal's Hist. of the Puritans, vol. i. c. i.

bishops, according to Burnet, were always [illegible] at the king's devotion, and though there [illegible] twenty-six parliamentary abbots, and two [illegible] they could not alone arrest the current, while all their hopes now depended on pleasing the king. Had, however, the spiritual peers remained united in firm opposition, the effect could only have been temporary; as, besides being probably molested with penal laws for extortions, &c. which they justified by prescription, the creation of a few temporal peers would have given a preponderance against them, when their ill-judged and unavailing attempts to contend with the other branches of the legislature would have been productive of a greater fall than they had any cause to anticipate.

Wolsey, that he might render himself memorable as a patron of learning, and founder of bishoprics, as well as enlarge the royal power over all religious establishments, used his great influence at one time with the pope to obtain a bull for suppressing a few monasteries, on the condition of still converting the property to pious uses; and, as a pretext was necessary, he visited those endowments by virtue of his legantine power, and attached to them charges of immorality, which opened the road afterwards to their total suppression*. Some petty houses were by him suppressed, of

* Burnet, p. 34. Herbert, 102. This author says, that the cardinal "knew this would please the king, who began to think that religious persons might serve God as well by fighting for the kingdom as praying for it, so he assured himself the authority thereof would be derived on him chiefly, and the pope, in the meantime, obnoxious,

which the property was employed towards founding colleges. But, when the Reformation had fairly begun, the plunder of the monastic establishments was fully determined on: and as it was expedient to repeat the charge of immorality, visitors were appointed to inspect the morals of these houses. That the visitors deserved well of their country, for exposing the false miracles by which a credulous multitude had been deluded, may readily be granted; but we ought to hesitate in giving our assent to the report of the horrid crimes which men interested in the ruin of these endowments pretended to have discovered within their walls.

while he could not but fear how far these innovations might extend." Strype's Ecclesiastical Memorials, Vol. i. B. I. c. 14. Godwin ascribes the cardinal's fall to his sacrilege in dissolving these petty houses, forty in number,—sacrilege which was alleged to have been severely visited on all concerned in it. The following is a curious passage from that writer. "Negotium hoc (ut nonnulli animadverterunt) tanquam aurum Tholosanum, omnibus qui illud attigisset, aut perniciem aut saltem maximas calamitates attulisse creditur. De Papa et Cardinali post dicetur. Ex ministris autem quinque quorum opera hic usus est in tot piorum hominum donariis intervertendis, evenit postea ut duobus duello decertantibus alter alterum occideret, et homicida suspendio plecteretur, tertius in puteum se dederit præcepitem ac spontanea morte submersus perierit: quartus, homo opulentus, ad eam egestatem devenerit, ut victum ostiatim emendicare ante obitum cogeretur, alius denique Doctor quidam Alanus qui authoritate inter cæteros præcipue pollebat, quo tempore archipiscopus Dublinensis in Hibernia agebat, ab inimicis crudeliter confossus periit. Utinam his [illegible] exemplis edocti, discant homines, res Deo semel consecratas [illegible] attrectare. Si istos justitia divina tam severe puniit, [illegible] ecclesiæ dicata sed parum sancté administrata, ad usus haud [illegible] res converterunt, hoc tamen non spectantes, sed pravis [illegible] cupiditatibus quid illis putabimus eminere, qui res ecclesiasticas quacunque data occasione, sine delectu diripiunt et expilant, semet tantum locupletandi gratia." Rer. Ang. An. l. i. an 1525.

The imputations were similar to those which, as inferences from the celibacy of the Romish clergy, the followers of Wickliffe had, in the fourteenth century, cast upon that class; and, it is not a little extraordinary, that the same individuals who took the trouble to gain a character for sanctity in the neighbourhood, and were generally beloved, should have unveiled their wickedness to men whose object in visiting them was to find an apology for their ruin *.

The dissolution of monasteries having been determined on, proposals were made to Parliament for devolving their property on the crown, and the reasons assigned were, that every king ought to have three things: 1. The means of properly supporting the state of royalty, and of defending his subjects. 2. Of aiding his confederates, who otherwise would not assist him; and, lastly, of rewarding his servants: That, therefore, if the monastic property were granted to the sovereign, he could never have occasion again to apply to his subjects for pecuniary aid, but would be enabled to support 40,000 well trained soldiers for the public defence, beyond the present military establishment—and to create temporal peers in the place of abbots and priors †. This plausible scheme, however, appears to have deceived nobody: The abbots and priors, imitating the conduct of their predecessors in the *Parliamentum indoctorum*, accused the laity of act-

* Burnet, v. i. p. 334, *et seq.* Eden, vol. i. c. 2.

† Howe's preface to Stow's An. Strype's Mem. v. 1. p. 345. 4 Inst. p. 44.

ing under the selfish and impious principle of appropriating the Church's patrimony to themselves*,

* The following is the greater part of an admirable speech by Fisher, Bishop of Rochester, in Nov. 1529, and fully establishes the statement in the text.

"My Honoured Lords,

"This is the place, where your glorious and noble progenitors have fraternized the kingdom from oppression. Here is the sanctuary where, in all ages but this of ours, our mother Church found still a sound protection. I should be infinitely sorrowful, that from you, that are so lovely branches of antiquity, and Catholic honour, the Catholic faith should be so deeply wounded. For God and your own goodness' sake, leave not to posterity so great a blemish, that you were the first, and only those that gave it up to ruin. Where there is cause, you justly punish, and with justice; but beware of infringing so long continued privileges, or denying the members of the Church the very parts of their advantage that is enjoyed by every private subject The Commons shoot their arrows at our livings, which are the motives that conceit us guilty, &c. My Lords, consider your actions, be advised. This cause seems ours; it will be yours, if that the mother church do feel injustice. Your turns are next to feel the like oppressions. When faith begins to fail, then all must perish. Heretic fancies taint the common people, whom novelties betray even to perdition: Let neighbour neighbours tell you your own story. Huss, Luther, and such like frantic teachers, cry out against the Church in all their sermons; they do pretend nothing but reformation, when they themselves are deepest dyed in mischief. What follows then—to wit, perdition—we may expect in justice. The Church's wealth occasioned this first moving. If that were poor, our vices would be virtues, and none would be forward to accuse us. What can we look for then but desolation, where private ends are made a public grievance? Our lesser houses are desired from us, not that their value doth deserve the motion, but that the greater may succeed their fortune, which soon will follow, if the gap be opened." Scott's Edit. of Som. Tracts, v. i. p. 40. See Hall, f. 188. The Commons resented the speech deeply. Now, it is remarkable, that the visitation of the monasteries to ascertain the state of their morals, upon which the lesser houses were suppressed, took place six years posterior to this speech, that is, in 1535. See Burnet, p. 347. Who then can believe the report of the visitors?

while they pretended the public good; and subsequent events verified the charge. Parliament began with granting the lesser monasteries, whose revenues were individually rated as not exceeding £200 per annum, and might possibly have paused at the proposal of proceeding farther, had not their hopes been gratified. Of the smaller houses, there were three hundred and seventy-six suppressed under this statute, and though their revenues were rated so low as at, or under, £200 each, many of them were in reality to the amount of thousands. The suppresion, by striking at the stability of property, and abridging the means of providing for daughters, &c. excited great discontent and open outcry amongst the higher classes, as the loss of the wonted charity and other consequences of the proceeding, did amongst the lower—and in some places the people broke out into rebellion; but the rebels were reduced, and the king soon conciliated the majority of the aristocracy by liberal gifts, and by following the advice of his confidential minister, Cromwell, to sell the lands at an under value to the nobility and gentry of the several counties—that so many might be interested in supporting the transference of property as should effectually oppose the re-establishment of those institutions *.

* Burnet, v. i. p. 406. Some writers have imagined that Henry might have rendered himself absolute, by retaining the Church property: But it is quite evident from all the facts, that the [illegible] utterly impracticable. The discontent was exceedingly great at first, manifested itself in insurrections, and would have led to a revolution had not this method been adopted. See Burnet, b. iii. The nobility and gentry used to provide for their younger children in the religious

The fall of the lesser houses, and such a disposal of their property, prepared the way for the subversion of the greater: But, as parliament might not have been inclined all at once to grant the latter to the king, he accomplished his object by a most politic proceeding. The vacancies which had occurred, by the deaths of abbots and priors, since the renouncement of the papal yoke, were filled up by Henry with individuals nominated for the express purpose of resigning the foundations into his hands *; while new visitors were appointed to detect the secret crimes and impostures of the remaining endowments, and threaten or seduce the heads of them into resignations †. The visitors charged some abbots and priors with abetting the late rebellion, others with great disorders in their lives, many with having dilapidated the revenues and wealth entrusted to them, either by carrying off the plate, &c. or granting leases to their kindred at quit rents, when they perceived the ruin of the endowments to be inevitable; others again with

houses, and complained much of the injury they sustained by the suppression—till they got the lands. P. 405. It is curious to observe the language of Burnet, as applied to the different classes. The lower ranks forsooth "followed Christ for the loaves, and were most concerned for the loss of a good dinner on a holiday. Their discontent lay in their stomach." P. 406. and yet he allows, that all the higher classes eagerly shared in the spoil, making their religion subservient to their worldly interest. This prelate thought the religious houses should have been reformed to the new doctrine, and not dissolved. See his Pref. Latimer too wished the preservation of two or three in every shire. Burnet, p. 432. Herb. 186, 192, 217.

* Burnet, v. i. p. 430.

† Burnet, v. i. p. 430, *et seq.*

having denied the king's supremacy;—and as all these, while threatened with prosecutions on one side, were flattered with promises and offered tolerable terms on the other, they, for the most part, compromised matters by surrenders: Many, in the hope of advancement to bishoprics, or to be made suffragan bishops, as the inferior abbots generally were, gladly recommended themselves by ready and cheerful resignations: And to some, the honour has been ascribed of acting from new sprung zeal for the Reformation. Some obstinately stood out and denied the king's supremacy, either joining a party in arms or abetting rebellion, and were attainted of treason—when, contrary to all law, the endowments over which they presided, were declared to be forfeited to the Crown *. The surrenders were of themselves invalid, because the abbots and priors, being merely trustees, had no power to alienate the property; but, as the lands and revenues were for the most part disposed of like those of the lesser houses, there was no difficulty in persuading parliament to supply the defect of title, whether by resignation or forfeiture; and all leases granted by the abbots, &c. within a year of the surrender, were reduced.

The personal property that devolved on the Crown was immense, and the rated revenue of all the

* Burnet, p. 430. *et seq.* See vol. v. in proof of the violent means resorted to by the visitors. P. 226. *et seq.* Herbert says, that Cromwell, "betwixt threats, gifts, persuasions, promises, and whatever might make man obnoxious, obtained of the abbots, priors, abbesses, &c. that their houses might be given up." P. 217. See also p. 218.

houses suppressed, was, according to one account, £131,607, 6s. 4d. to another, £161,100, but the real value is said to have been at least ten times more; and though six new bishoprics were erected out of real property, and part was retained by the Crown, infinitely the greatest portion was either sold at an undervalue, or given away to the nobility and gentry *. The influence conferred by it was proportionally great, and the precariousness of their tenure, till their rights were confirmed by time, obliging the purchasers and grantees to throw their influence into the scale of the Crown, increased the authority of the monarch to a vast extent The state of factions, as we have observed, enabled Henry to occupy the proud place of arbiter in determining their fate. The ascendancy at once belonged to the side he embraced, and the new proprietors were fully aware,—indeed the rebellions which followed the suppression of the monasteries afforded them a salutary lesson, by showing the strength that could be arrayed to restore the church patrimony †,—that, if by an ill-timed opposition they irritated the monarch to renew his alliance with the Catholics, that body, thus united under a regular head, might succeed in recovering the patrimony of the church out of profane hands. The fluctuating principles of Henry, as well as those to which he always ad-

* Burnet, v. i. 488. Herb. 218. Bur. 487. See Strype's Ec. Mem. v. i. p. 264. *et seq.* in proof of the keenness with which the houses were sued for.

† See Herbert, Burnet, &c.

hered, were calculated equally to alarm the one faction and encourage the other: for, "in the whole progress of the changes," says Burnet, "his design seems to have been to terrify the court of Rome, and cudgel the Pope into a compliance with what he desired*;" and Clarendon justly observed, that he was "not less a Catholic to the hour of his death, than when he writ against Luther†." This then, was one of the grand sources of that influence in parliament, so much remarked, which Henry possessed in ecclesiastical affairs.

At an after period, the pure and evangelical times of the first reformers, with their views, were appealed to as the criterion of the protestant creed, and the zeal of Laud and his coadjutors is alleged to have been only directed towards restoring the church to that model of imputed perfection‡. It will therefore be no less conducive to a correct idea of the schemes entertained during the reign of Charles I. than to that of the government in the time of Henry VIII. to give a summary of the chief acts of the legislature, which conferred power upon the latter monarch in ecclesiastical affairs, and an account of the manner in which he carried them into effect.

The same parliament which confirmed the surrender of the greater monasteries, strengthened the crown by an act in regard to proclamations. As Henry had proceeded to innovate in religious

* Hist. of Ref.

† Clarendon's Hist. of the Church, p. 321.

‡ Heylin's Introduction to, and Life of Laud.

matters, without the intervention of the legislature, great murmurs had arisen, and his injunctions were, with other proceedings, generally considered as an invasion of public rights*. The act therefore sets forth in the preamble, "the contempt and disobedience of the king's proclamations, by some who did not consider what a king by his royal power might do, which, if it continued, would tend to the disobedience of the laws of God, and the dishonour of the king's majesty, (who may full ill bear it) considering also that many occasions might require speedy remedies, and that delaying these till a parliament met, might occasion great prejudices to the realm, and that the king by his royal power, given of God, might do many things in such cases; therefore it is enacted, that the king for the time being, with advice of his council, might set forth proclamations, with pains and penalties in them, which were to be obeyed as if they were made by an act of parliament. *But this was not to be so extended that any of the king's subjects should suffer in their estates, liberties, or persons by virtue of it: nor that by it any of the king's proclamations, laws, or customs were to be broken and subverted.*" Then follow clauses about publishing proclamations and prosecuting those who contemned or disobeyed them.

Another act, commonly known by the name of the bloody statute, followed immediately, though

* Hist. of Ref. vol. i. p. 477.

with much opposition *; and, it is curious to learn, that, as it countenanced the Romish faith, so it reconciled many of that party to the suppression of monasteries †. It is entitled an act for abolishing diversity of opinions in certain articles concerning Christian religion; and sets out in the preamble, with stating, "that the king, considering the blessed effects of union, and the mischiefs of discord, since there were many different opinions both among the clergy and laity, had called this parliament, and a synod at the same time, for removing these differences, when six articles were proposed and long debated by the clergy, and the king himself had come in person to parliament and council, and opened many things of high learning and great knowledge about them: and the six articles were, 1st, That, in the sacrament of the altar after consecration, there remains no substance of bread and wine, but under these forms the natural body and blood of Christ are present. 2d, That communion in both kinds is not necessary to salvation to all persons by the law of God, but that both the flesh and blood of Christ are together in each of the kinds. 3d, That priests may not marry by the law of God. 4th, That vows of chastity ought to be observed by the law of God. 5th, That private masses ought to be observed, which as it is agreeable to God's laws, so men receive great be-

* Strype's Ecclesiastical Memorials, vol. i. b. i. c. 47. Burnet, vol. i. p. 465, *et seq.*

† Id. p. 471.

nefits by them. 6th, That auricular confession is expedient and necessary, and ought to be retained in the church." It was enacted also, that those who spoke, preached, or wrote against the first article, should be adjudged heretics, and be burnt without any abjuration, as well as forfeit their real and personal estates to the king. That those who preached against, or obstinately disputed the other articles, should suffer death as felons, without benefit of clergy, and that those who either in word or writing declared against them, should be imprisoned during the king's pleasure, and forfeit their goods and chattels for the first offence, and for the second, suffer death. All marriages of the clergy were annulled, and a severe clause against their incontinence was inserted. For carrying this law into effect the king was empowered to issue commissions to the Archbishops and Bishops, and their commissaries, to hold sessions quarterly, but to proceed upon presentments, and by a jury of twelve men according to law.

The statute 32. Henry VIII. c. 20. sets out with stating, that the king, as supreme head of the Church, was taking much pains for a union amongst all his subjects in matters of religion; and for preventing the farther progress of heresy, had appointed many of his bishops, and the most learned divines, to declare the principal articles of the Christian belief, with the ceremonies and mode of service to be observed: that, lest a matter of such consequence, instead of being done with requisite care, should be done rashly

or hastened through in this session of parliament, it was enacted—"that whatsoever was determined by the archbishops, bishops, and the other divines now commissionated for that office, or by any others appointed by the king, or by the whole clergy of England, and published by the king's authority, concerning the Christian faith, or the ceremonies of the Church, should be believed and obeyed by all the king's subjects, as well as if the particulars so set forth had been enumerated in this act, any custom or law to the contrary notwithstanding." But a proviso was added which destroyed the clause, "that nothing should be done or determined by the authority of this act, which was contrary to the laws and statutes of the kingdom."

Thus authorized by statute, the king and his bishops prepared a book of injunctions which contained the substantials of the Romish creed: the seven sacraments, the real presence, penance, though modified, auricular confession, absolution, extreme unction, the worship of images, invocation of saints, &c. &c. formed the basis of the book; and so early was the public attention called to the subject of free will and necessity—the effect of baptism, &c. which afterwards proved such a fruitful source of schism. But the grand subject of dispute in this reign regarded the corporeal presence of Christ in the eucharist, and many suffered at the stake for denying it. The missal was somewhat altered, but the greater

part of the ceremonies of the old religion were retained *.

The statute 35. Henry VIII. c. 1. allows the use of the Bible in English to all of a certain rank, provided they read it quietly; but prohibits any from expounding it in an open assembly, except such as are licensed by the king or his ordinary—and likewise provides, that artificers, apprentices, journeymen, as well as husbandmen, &c. under the degree of a yeoman, shall not read the scriptures in their native tongue: it permits all classes to read and teach in their houses the book published in the year 1540, with the psalter, primer, paternoster, the ave, and the creed, in English; but provides, that all spiritual persons who preached or taught contrary to the doctrine set forth in that book, were to be admitted, for the first conviction, to renounce their errors; for the second, to abjure and carry a faggot; but if they refused, or if they fell into a third offence, they were to be burnt. The laity, however, for the third offence, were only to forfeit their goods and chattels, and be liable to perpetual imprisonment. The statute of six articles was also declared to be in force, but it was thought to be moderated by the authority which was given to the king to alter it, or any of its provisions at pleasure.

We have already had occasion to speak of the supremacy—and it may not be improper to illus-

* Burnet, vol. i. p. 519. *et seq.* Ec. Memorials, vol. i. See Neal's Hist. of the Puritans, vol. i. c. 1.

trate its nature by an act passed towards the conclusion of this reign, which declares, that "archbishops, bishops, and deacons, and other ecclesiastical persons, have no manner of jurisdiction ecclesiastical, but by, under, and from, his royal majesty, and that his majesty is the only supreme head of the Church of England and Ireland, to whom, by scripture, all authority and power is given to hear and determine all manner of causes ecclesiastical, and to correct all manner of heresies, errors, vices, and sins whatsoever, and to all such persons as his majesty shall appoint thereunto."

This summary of the principal legislative enactments regarding religion, evinces that, during the reign of Henry VIII., the Reformation, in respect to doctrine, made small advances; and that parliament devolved powers of an extraordinary nature upon the king. The causes of this have been already explained; yet the reader may be again reminded of the strange posture of affairs. It is easy to censure, and dwell upon the impolicy of, intolerance; but, in the season of alarm and confusion, it requires a rare perspicacity of judgment, and expansion of intellect, to look beyond the terrific gloom of the moment, and to remain calm and unruffled amid the jarring elements. Such was not to be expected in that age, when it is considered that, after the Reformation had been tried by the test of experience, men of the greatest sagacity held, that different religions in a state were incompatible with public safety. The into-

lerance of Henry and his parliaments have been condemned as the abstract of tyranny—not unfrequently too by the devotees of sects; but it should ever be remembered, that, of all the sects obnoxious to persecution, there was not one which did not thirst for an opportunity to exercise similar dominion over all who refused implicitly to adopt its doctrine. Nor had these religionists any difficulty in reconciling such an atrocious principle with their grievous complaints of the bloody intolerance to which they were themselves exposed: for they maintained, that as they drew their creed from the genuine source, it could not be a matter of doubt; and that, as others wandered in darkness, merely from the perverseness of their own hearts,—from unpardonable prejudices, and wilful blindness, it was no less an act of piety, than of mercy to the rest of mankind, to punish, or cut off, as workers of iniquity, those who obstinately shut their eyes against the light. The particular direction which intolerance took in the time of Henry VIII. was owing to the various sources of influence possessed by the crown; but the same spirit, in a different form, might, and in all probability would, have disgraced society under the purest republic. In a free government, however, intolerance cannot exist long: Though, in a season of revolution, false notions and unfounded fears may inflame the great body of the people with a rage to persecute their brethren, yet it will commonly be found, that it is selfishness, disguised under the cloak of reli-

gious feeling, which continues to blacken the heart with unhallowed zeal to drown opposition in blood. When men in power resent the injury done to their pride, by sects who question their exclusive right of place, when they dread being dispossessed by those sects, or apprehend a loss of public respect—then it is that they are a prey to furious, persecuting passions, encouraged by the common voice of the party, and confirmed by the hostility of the opposing sects, hostility which their own breasts reflect, and all sanctified, even in their own eyes, by the bigotry which they indulge as a self excuse. But as the clergy are, under a good government, kept in their proper sphere, and consequently have not the same motives to work upon the passions of the multitude, while no particular sect so exclusively occupies the road of preferment and honour, as to have a direct interest in suppressing others—people soon begin to regard each other's opinions with the genuine spirit of Christianity and philosophy.

Though the Reformation, in regard to religion, had advanced little, much had, in reality, been done. The power of Parliament to regulate the Church had been fully recognized; and the circumstances which retarded change could not operate long. Great powers had indeed been transferred to the throne; but, being derived from the legislature, they could, upon every just principle, be resumed by the same authority; and, in one respect, they have been erroneously exaggerated. If the constitutional language were to be literally in-

terpreted, the sovereign is absolute proprietor of every man and thing within the realm—the parliament is his—the people are his, &c. But, it is superfluous to add, that this is not the principle of the Constitution—which gives the right of reigning, subject to the condition of his governing according to law, and under direction of his great council the Parliament—and that his will can only be signified, and acted upon, through the legal channels. Had this been duly weighed, certain writers would not have discovered such a fund of obloquy in the statutes which gave the king supremacy over the Church. The great object of those statutes was to rescue the kingdom from a foreign yoke, and to prevent the English clergy from establishing independent authority in their own body; in a word, to bring ecclesiastical causes, like the civil, under the controul of the sovereign, in his capacity of chief magistrate and fountain of justice: But the prerogative being bounded by the provisions of the legislature—provisions too ample indeed in that reign—the supremacy abstractly considered, implies no unreasonable power in the crown; and does not in reality involve any question about the respective merits of ecclesiastical establishments, except in so far as the clergy maintain, that their order is a divine institution which ought to be independent of civil government. Wherever there is a religion of the state, it ought, in the nature of things, to be erastian or subordinate to the civil constitution. If it be otherwise, there must necessarily either be such a clashing of interests between the church

and state, as will prove destructive of public peace, and, in the common case, end in the ruin of the religious establishment, or the monarch will form a junction with the priesthood prejudicial to the rest of the community, since each will, from their mutual interest, assist the other in usurpations upon public rights. The last had occurred under the Romish yoke, and still continued in Catholic monarchies; the former was strikingly exemplified in Scotland by the Presbyterian system, while it flourished in primitive vigour. It is true that Presbyterianism has since proved itself in that country perfectly compatible with monarchy; but it should always be remembered, that it only acquired that character after its powers were so abridged, that it had virtually become erastian*. It is the patronage of the crown, and not the supremacy, which gives it influence: Henry's great authority was derived from the other statutes as well as from his patronage, and not from those which conferred upon him the supremacy.

On the death of Henry VIII. the succession opened to his son Edward VI. then a boy of nine years and four months old. By Henry's will, which he had been empowered by statute to make, sixteen persons had been nominated his executors and regents of the kingdom till his son should

* Those who have attentively perused Baillie's Letters, will be satisfied that the gentlest disposition in an ecclesiastic—and I quote Baillie, because he was naturally remarkably mild—does not secure him against a desire to establish a church government inconsistent with the civil.

complete his eighteenth year; and of these the young king's uncle, the Earl of Hartford, afterwards created Duke of Somerset, was chosen protector of the realm and governor of Edward's person. To those, twelve were added as a privy council, to assist them in public affairs. The regents differed upon the important subject of religion, some being for the old, and the rest for the new; but the majority, with the protector at their head, having declared for the Reformation, carried measures for promoting it, in spite of opposition from the minority, joined by the greater part of the bishops and inferior clergy, who still adhered to the principles of the Romish creed. Persecution upon the bloody statute was stopt; the prison doors were thrown open to those who suffered under it; and exiles, of whom several were afterwards preferred to great benefices, returned in safety and honour to their native country: Images, soul-masses, &c. were treated as superstitions; a book of homilies, more freely composed, was published by authority as a substitute for preaching ministers, of whom there was a great deficiency; a royal visitation was appointed, and new injunctions, likewise of a more liberal kind, were delivered by the visitors along with the homilies, to the clergy throughout the kingdom. The first measures were adopted without the intervention of the legislature, in virtue of the powers conferred upon the crown by the statutes about proclamations, and by that which authorised the recal of the statute of six articles: But parliament soon

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met, and formally repealed, not only all laws which made any thing treason that was not specified in the 25 of Edward III., but two statutes against Lollardies, the bloody statute with the acts which followed in explanation of it, all laws in the late reign declaring any thing to be felony that had not been so before, together with the statutes which made royal proclamations, in certain respects, of equal authority with acts of the legislature. It was particularly enacted too, that all processes in the spiritual courts should run in the king's name*. Some deanries and chauntries had been given to Henry, and the remaining chauntry lands, with legacies for obits, &c. were now granted to the crown, under the pretext of maintaining grammar-schools out of the revenue; but the hungry courtiers, of whom several were gratified with new titles or peerages, engrossed all, either in the form of gifts, or of purchases at low rates †.

It would be inconsistent with our plan to specify particularly the alterations in the public creed and worship during this short reign; suffice it to say, that the altar was turned into a communion table, and the idolatry of the mass converted into a common sacrament, the real presence having, latterly, ceased to be longer an article of faith; that images were pulled down, the invocation of saints prohibited, and the mass books called in; that the marriage of the cler-

* Burnet, Part II. b. i. Strype's Ecclesiastical Memorials, vol. ii. b. i. Neal's History of the Puritans, vol. i. c. ii.

† Strype's Ecclesiastical Memorials, vol. ii. p. 63, 362. Burnet, vol. iii. p. 84, 125. Neal, vol. i. p. 51.

gy was allowed, and auricular confession left indifferent; that articles of faith similar to the 39 articles were agreed upon, and that a liturgy which differs little from the one now in use having been framed, was sanctioned by the legislature. The liturgy was first published merely by royal authority, and a great murmur was excited by so bold an invasion of public privileges; but, though the ministers of the crown affected to defend it on the principle of its falling within the scope of the king's supremacy, they prudently lost little time in summoning a parliament to give it the authority of law. Farther alterations were meditated, and, in particular, it was at one time in agitation to discontinue the vestments of the clergy, afterwards a great cause of schism; but the premature death of Edward gave a very different direction to public affairs. Of this young prince, to whom other writers ascribe the most amiable qualities, Heylin, chaplain to Charles I. and the confident of Laud, says, that "he was ill-principled, that his reign was unfortunate, and that his death was not an infelicity to the church *."

The conduct of the aristocracy fully evinced that the part which they had hitherto taken in the Reformation, had proceeded from worldly motives. Not content with the property they had acquired

* Heylin's History of the Reformation, preface, p. 4. Part 7. p. 141. This author is, most inconsistently, in some places profuse in his praises of Edward. But inconsistency is the characteristic of Heylin; and he is the more inexcusable, as he possessed great talents and a clear judgment.

by the dissolution of the monasteries, (and from the great extent of tithes appropriated to those houses, which passed along with other grants, there remained little in many places for the clergy) they obtained the chauntry lands, &c. and enjoyed the very benefices of the church. The Lord Cromwell, who had been so active in bringing the enormities of the monasteries to light, had been Dean of Wells, the Earl of Hartford was promised six good prebends; "and," says Burnet, "many other secular men had these ecclesiastical benefices without cure conferred on them*." Some motions, to relieve the extreme misery and poverty to which the clergy were reduced, were made in Parliament; but, however ready that assembly might be to advance the views of the Court in regard to doctrine, it did not chuse to promote religion in that way, and a book, addressed to the Lord Chancellor, then Bishop of Ely, was published on the subject. The author, says Burnet, "shewed that without rewards or encouragements, few would apply themselves to the pastoral function; and that those in it, if they could not subsist by it, must turn to other employments; so that at that time many clergymen were carpenters and taylors, and some kept alehouses.

* Burnet, Part II. vol. iii. p. 14, 15. Cranmer, as well as the popish bishops, opposed the sale of chauntries, perceiving how they would be disposed of, p. 84. Strype's Memorials of Cranmer, b. ii. c. 24.—Calvin, too, addressed both the Archbishop and the Protector on this subject, advising the latter to endeavour to prevail upon those who had spiritual possessions to part with them, as they could not prosper otherwise. *Ib.*

It was a reproach on the nation, that there had been so profuse a zeal for superstition, and so much coldness in true religion. He complains of many of the clergy who did not maintain students at the university according to the king's injunctions; it is lamentable to discover that this selfish spirit was not confined to laymen; "that, in schools and colleges the poor scholars' places were generally filled with the sons of the rich." It is at least gratifying to learn, that the rich began to educate their families; for an act passed in this very reign, extending the benefit of clergy to peers, though they could not read! "and that "livings were most scandalously sold, and the greatest part of the country clergy were so ignorant, that they could do little more than read*." But what says the good and famous Bishop Latimer on this subject? "That the revenues of the church were seized by the rich laity, and that the incumbent was only a proprietor in title. That many benefices were let out to farm by secular men, or given to their servants as a consideration for keeping their hounds, hawks, and horses; and that the poor clergy were reduced to such short allowance, that they were forced to go to service, to turn clerks of the kitchen, surveyors, receivers,

* Burnet, Part II. b. i. vol. iii. p. 374, 375; see also Strype's Ecclesiastical Memorials, vol. ii. p. 63. also c. 31. In page 299, there is a very curious account of a gentleman, Sir George Norton, obtaining a letter from the council to the bishop of Bristol to surrender to him the manor of Leigh, in Somersetshire. The bishop refused at first, but at last was obliged to consent.

&c. *." Camden informs us too, "that avarice and sacrilege had strangely the ascendant at this time. That estates formerly settled for the support of religion and the poor, were ridiculed as superstitious endowments, *first miscalled and then plundered.*" The bishops also parted with the lands and manors belonging to their livings, and the courtiers grasped at whatever they could lay their hands on.

This, however, was not the only blemish of the age. Those at the helm of affairs, though they denied infallibility to the Pope, arrogated it to themselves, and unfeelingly brought several of their protestant brethren to the stake, who could not subscribe to all their doctrine. We are informed that Edward himself, green in years as he

* Latimer's Sermons. This prelate conjectured that there were ten thousand fewer students in the universities at this time than formerly. See vol. ii. b. ii. of Strype's Ecclesiastical Memorials. Memorials of Cranmer, b. ii. c. 8. and 24. Heylin's Hist. pref. and p. 17, 60, 61, 117, 131, 132. Even altar-cloths, plate, &c. were grasped at; nay, the very bells did not escape their rapacity. See also Strype's Memorials, vol. ii. p. 362. It appears that morals were much relaxed. *Id.* b. ii. c. 23. The people refused to pay tithes to the curates; of whom they would say, "our curate is naught, an ass head, a lack latine, and can do nothing. Shall I pay him tithe that doth us no good, nor none will do?" *Id.* p. 445. "Patrons did shamefully abuse their benefices, sometimes by selling them to such as would or could give money for them, or other considerations. Sometimes they would refarm them; insomuch that, when any afterwards should have the benefice, there was neither house to dwell in, nor glebe land to keep hospitality: But the curate was fain to take up his chamber in an ale-house, and there sit and play at tables all day," p. 448. Bribery for all places, and bribery of judges to an astonishing degree, p. 452. Neal, p. 77.

was, though so intolerant towards Catholics as to refuse his sister Mary the liberty of celebrating mass *, abhorred the persecution of the reformers; and it is probable that his ideas were more enlarged on that point than those of his council; for, independently of the selfish motives that operated on his advisers, it may be admitted, that, in such cases, charity is often a safer guide than great abilities; since, while the mind is clouded with passion, its powers are perverted into the melancholy office of furnishing arguments to justify its fury †.

* Strype's Memorials, vol. ii. b. ii. c. i.

† In the case of Joan Bocher, commonly called Joan of Kent, whom his ministers had resolved to send to the stake—for a singular opinion—Edward refused to subscribe the warrant for her execution, and Cranmer was employed to persuade him, who "told the king he made a great difference between errors in other points of discipline, and those which were directly against the apostle's creed. That these were impieties against God, which a prince, as being God's deputy, ought to punish, as the king's deputies were obliged to punish offences against the king's person." Edward was prevailed on; but he signed the warrant with tears in his eyes. Burnet, vol. iii. p. 206, &c. This archbishop had also his day, as the next deputy conceived it her duty to God to consign him to the flames. Joan of Kent's heresy, as it appears in the instrument drawn up against her in the Archbishop's Register, runs thus: "That you believe that the word was made flesh in the Virgin's belly, but that Christ took of the Virgin you believe not, because the flesh of the Virgin, being the outward man, was sinfully gotten and born in sin. But the Word, by the consent of the inward man of the Virgin, was made flesh." Strype's Life of Cranmer, p. 181. This, one would think, a very innocent error; but it appeared to the Archbishop and his coadjutors an unpardonable one. "Great care," says Helylin, (who declares she justly deserved her fate,) "was taken, and much time spent by the Archbishop to persuade her to a better sense; but when all failed, and that he was upon the point of passing sentence upon her for persisting obstinate in so gross an heresy, she most malicious-

The various sources of influence which operated in the last reign, continued in this. The rights of the new proprietors to the church lands and revenues were not yet confirmed by

ly reproached him for passing the like sentence of condemnation on another woman, called Ann Askew, for denying the carnal presence of Christ in the Sacrament; telling him that he had condemned the said Ann Askew not long before for a piece of bread, and was then ready to condemn her for a piece of flesh. Hist. of Ed. VI. p. 89. Cranmer was concerned in bringing Lambert, the disputant, who fearlessly maintained his cause (he denied transubstantiation) against Henry VIII., to the stake, (Strype's Life of Cranmer, p. 65,) and heretics in general were treated with no greater indulgence by him: yet he had the character among Protestants of uncommon mildness of temper, and, says Burnet, "was so noted for his clemency, and following our Saviour's rule, *of doing good for evil*, that it was commonly said, the way to get his favour was to do him an injury." Vol. i. p. 595. Into such fiends does bigotry convert the best of men! But an apology can more readily be admitted for Catholics, who enforced the creed in which they had been educated, than for such as Cranmer, whose faith was daily changing. He at one time as furiously persecuted those who denied transubstantiation as ever he did any other imputed heresy, and was long a stickler for pilgrimages, purgatory, &c. (See Strype's Life of him, and particularly p. 257.) and latterly, while he became fierce against transubstantiation, he borrowed from Ridley the senseless jargon common to many, "of a real presence of Christ's body and blood in the holy sacrament, as to exclude that corporal eating of the same, which made the Christian faith a scorn both to Turks and Moors:"—and held, that "in the sacrament were truly and verily the body and blood of Christ, made forth effectually by grace and spirit." Heyl. p. 53. see also Fox's Martyrology, vol. ii. p. 425, 767, and Scott's Somers' Tracts, vol. i. p. 83. Cranmer, when it was his turn to suffer upon his own principle—that the monarch, as the vicegerent of Heaven, is bound to punish its alleged enemies, did not shew the spirit of Joan Bocher, as, though he went through the last scene with resolution, he had previously tried to save his life by six several recantations, (Strype's Memorials, vol. iii. p. 232, Life of Cran. p. 383.;) yet his constancy, in his last moments, is lauded by writers, while poor Joan's firmness is a subject of reproach.

time; and a daily accession was either obtained, or expected, by individuals of great consequence in the community, while several were bound more strongly to the crown by honours. The state of society, too, obliged the aristocracy and the other independent members of the community to strengthen the executive. Repeated insurrections of the most alarming kind threatened the public peace during this reign; some of the insurgents used as their pretext, a desire to restore the old religion; but despair, the effect of pasturage, &c. was the primary cause of the disorders. Could it be shewn that the measures adopted against these unhappy men, were not always consonant to the principles of constitutional freedom, it would still not prove that the great body of the people either were not acquainted with their rights, or neglected them. For the measures, instead of originating with the court, were generally pursued at the desire of the aristocracy; and if not at the express desire of the other independent classes likewise, at least without opposition from them. It has already been said that the Lord Protector owed the hostility which brought him to the block, chiefly to his unavailing efforts to execute the laws against enclosures, &c.; and, in a word, to meliorate the wretched condition of the poor.

As Henry had renounced the Papal yoke, not from principle, but from a resolution to gratify his passions by disengaging himself from his marriage with Katherine of Arragon, and entering into

new alliances, Mary naturally regarded the reformation as stampt with all the impurity of the original motives that actuated her father's mind, —as stained, no less with the grossest injustice, than the blackest impiety, in degrading her mother from the rank of queen, into the humiliating condition of a discarded concubine, and branding herself with illegitimacy, which seemed, at one time, to debar her from every hope of succession. The Romish Church, on the other hand, was endeared to her from its sufferings in her own and her mother's cause, and clung to as the sheet anchor which promised to rescue her from bastardy, and to afford a chance of vindicating her right to the crown. These feelings, which had been nourished in her from youth, must have been rendered still more poignant by the persecution to which she had been exposed for adhering to the creed of her ancestors; and the last attempt to defeat her succession by raising Lady Jane Grey to the throne, as it testified the same hostility, on the part of protestants, which had hunted her from her tender years, could not fail to operate unfavourably on a disposition, that, though not naturally unamiable, had been soured by misfortune, and perverted with bigotry *. The temper of her advisers, and

* Burnet says of Mary—"She was naturally pious and devout, even to superstition; had a generous disposition of mind, but much corrupted by melancholy, which was partly natural in her, but much increased by the cross accidents of her life, both before and after her advancement; so that she was very peevish and splenetic towards the end of her life." Vol. iii. p. 432. She narrowly escaped an ignominious death in her father's time for her religion. Ib. See her character. Id. p. 667.

particularly of her husband—cold-blooded, cruel, and bigotted as Philip was, encouraged persecution, while the continued machinations of the opposite party ever provoked fresh resentment. The disgraceful scenes that occurred during her reign, which have rendered that portion of British history so disgusting, (though the same spirit in the reformed had indicated similar intolerance in the two preceding, and was with difficulty restrained in the next,) were congenial to the temper of the great body of the Catholics, who were not actuated merely by the ordinary feelings of a faction struggling for pre-eminence, but were infuriated by bigotry accompanied with the remorseless cruelty which it is so apt to inspire,—by a deep sense of injuries, for their adversaries had set an example of cruelty which they were now doomed to experience in turn,—and, above all, by fear. They justly dreaded that, unless they succeeded immediately in subduing the opposite faction, their triumph would be transient, as that a party, at least as numerous as themselves, would recover the superiority, and assert it with their former rigour, inflamed with vengeance for temporary sufferings. Under the dominion of such passions, they, according to the practice of all bigots, attempted to restore the ancient worship by measures which alienated, instead of reconciling, the public mind.

It was only in the progress of the next reign that the aristocracy began to acquire that serious cast of mind which distinguished them as well as

the people at an after period of English history. In all the previous changes, they appear to have been actuated solely by an insatiable thirst for church property *, and the same peers who had voted for the Reformation, together with the bloody laws to enforce it, now gave their voice for a return to the Romish faith, and for all the statutes that carried ruin to the party whom, in the former reigns, they had exclusively protected and encouraged†. The Reformation had brought an immense accession of property to the aristocracy, and a relapse to Popery, as it implied a charge of sacrilege against the plunder of the church, seemed inconsistent with the security of their tenures: But, however much Mary desired the restoration of that property, she knew that the possessors would never surrender it without a convulsion; and, in again acknowledging the supremacy of the Pope, she was anxious for the support of the leading ranks. She therefore suppressed her secret pur-

* "Though the revenues of the Church," says Strype, "were miserably spoiled in the days of King Edward, by the nobility and gentry, that got them into their own hands, upon pretence of maintaining their houses and state; yet even in this reign did this grievance continue." Ec. Mem. vol. iii. p. 251. *et seq.* It was not only church lands, parsonages were held by them, tythes gathered, &c. &c. Passages are quoted from a treatise of a Dr. Turner, who complains that though his living was only £74 a year, the first-fruits were withheld; and gives many instances of their rapacity. "I would," says he, "there were some act of parliament made against such valiant beggars" (they stoopt to beg of churchmen, but their begging seems to have been equivalent to a demand) "which vex poor men, as I was, much worse than the lousy beggars do." See also p. 177.

† Neal, vol. i. p. 83.

pose of resuming the property for the church, and held out an assurance to the possessors, that their rights would be confirmed*. It was their interest, on the other hand, to gratify the Queen in the article of her faith, since in the character of legislators, they might direct the current which they could not avert, and by strenuously opposing her in the first point, they might provoke her to throw herself upon a more violent party, and thus hazard the loss of all.

While the Catholics were elated by the countenance, protection, and direct support of the sovereign, as well as by the ruin of such a numerous body of their adversaries, and the Protestants were dismayed by the change, and terrified by the cruelty of government, it is not wonderful that Papists should have been generally successful at elections for Parliament. Like her predecessors, including her brother, Mary, who knew that the attempt to act without the support of Parliament, would be pregnant with ruin, did not neglect to exert all the influence of the crown in favour of such individuals as could be depended on by the executive†; and, if we may credit the accounts

* Strype's Ec. Mem. vol. iii. p. 154.

† Strype has given a copy of the letter that was sent to the various sheriffs at the calling of Mary's third parliament, which reconciled the kingdom to the Catholic church. After stating that her chief object was the restitution of God's glory and honour, she proceeds thus: "These shall be to will and command you, that, notwithstanding such malice as the Devil worketh by his ministers, for the maintenance of heresies and seditions, ye now on our behalf admonish such our loving subjects, as by order of our writs, should,

transmitted, foreign gold was liberally distributed at elections, while Protestants were driven away by violence;—pensions, and bribes in money, rewarded the political profligacy of members in both houses; false returns operated to the exclusion of some, and several of the most spirited were debarred the lower house by force*. In the

within that county, choose knights, citizens, and burgesses, to repair from thence to this our parliament, to be of their inhabitants, as the old laws require, and of the wise, grave, and Catholic sort, such as indeed mean the true honour of God, with the prosperity of the commonwealth." She then declares, that no man's possessions shall be touched as was falsely rumoured, "by such as would have their heresies return, and the realm, by the just wrath of God be brought to confusion." She requires the sheriffs speedily to apprehend the spreaders of such rumours, that they may be sharply punished. Ecclesiastical Memorials, vol. iii. p. 155. It is unnecessary to remark, that when we have direct proof of such undue influence having been used in elections for the third parliament, we cannot withhold our assent to the accounts transmitted to us by less unquestionable authority of the practices on other occasions. Mary's letter, however, was scarcely so bad as that adopted by her brother the year before his death; for he concludes his letter thus: "Our pleasure is, that where our privy council, or any of them, within their jurisdictions, in our behalf shall recommend men of learning and wisdom, in such case their directions be regarded and followed, as tending to the same which we desire, that is, to have this assembly to be of the most chiefest men in our realm for advice and good council." Ecclesiastical Memorials, vol. ii. p. 394 and 5. In spite of all the abuse which was thrown out against Mary for interfering with elections, one of the first acts of Elizabeth was to follow the example. Strype's Ans. vol. i. p. 32. Introd. § 3.

* Burnet, Hist. of Ref. vol. iii. p. 453 and 4. This author quotes from one Beale, the clerk of the council in Elizabeth's time, and he says, "the same writer informs us, that in many places of the country men were chosen by force and threats; in other places, those employed by the court did by violence hinder the Commons from coming to choose, in many places false returns were made; and that some were violently turned out of the House of Commons." P. 454. An.

upper house, the spiritual peers were changed, and their number enlarged by a partial nomination of abbots, while the numerous places, &c. appear to have had a due effect upon the temporal, in completing their apostacy.

1553. See in page 471, an account of 1,200,000 crowns, equal to £400, 000 Sterling, having been sent by the emperor, to be distributed amongst the nobility and leading men, to reconcile them to the marriage, and to enable them to carry elections. See also p. 516, 517. "Gardiner," says Burnet, "had beforehand prepared the Commons," (of the new parliament, which met in April 1554,) "by giving the most considerable of them pensions; some had £200, and some £100 a-year for giving their voices to the marriage," p. 500. "Common justice was denied in Chancery to all but those who came into these designs." p. 472.

Mr. Hume appears to treat the idea of undue influence as ridiculous, (vol. iv. p. 378.) and states, that Fox, who is particular in giving an account of all those matters, makes no mention of any such thing. But the preceding note proves, that undue influence of a certain kind was resorted to, and yet Fox does not allude to it. Indeed the merit of that writer is in a measure confined to his particular subject—giving an account of the martyrs, and progress of religion. In the 13th of Elizabeth, a member of the Lower House, in the course of a long speech about the propriety of burgesses residing in or near the burghs they represent, to prevent undue influence, says, "In Queen Mary's time a council of the realm, not the Queen's Privy Council, did write to a town to choose a bishop's brother, and a great bishop's brother it was indeed, whom they assured to be a good Catholic man, and willed them to choose to the like of him some other fit man. The council was answered with law, and if all towns in England had done the like in their choice, the crown had not been so wronged, and the realm so robbed with such ease, at that parliament, and truth banished as it was." D'Ewes' Journal, p. 170. But, as the object which Mr. Hume aims at throughout his history, is to establish that the Lower House was regarded as of little importance, and a seat considered a burthen, it may not be improper to investigate the matter a little. Even in the third of Edward I. it appears by the statute of Westm. c. 5. that undue means were apprehended. For the statute runs thus: "And because elections ought to be free, the king com-

With all her furious bigotry, Mary was politic enough to endeavour to conciliate the affections of the people, by remitting ungathered taxes which had been granted during the late reign, by assuring the new proprietors of church lands, that their

mandeth upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election." The statute, 7 Henry IV. c. 15. runs thus: "Our lord the King, at the *grievous complaint* of his commons in this present parliament, of the undue election of knights of counties for the parliament, which be sometime made of affection of Sheriffs and otherwise, against the form directed to the Sheriff, to the great slander of the counties and hindrance of the business of the commonalty," &c. This was confirmed by 1 Henry V. c. 1.—By 8 Henry VI. c. 7. divers penalties were ordained. The abuse had proceeded to a great height, as appears by 23 Henry VI. c. 14. By that statute any sheriff who made a false return, was to pay damages to the party aggrieved, of £100, besides being subjected to the penalties. The whole act is very precise in guarding against such practices. In the 50th of Edward III. the Duke of Lancaster is said to have so packed a parliament, that except twelve, all the Lower House were under his controul. Daniel, p. 232. It was one of the articles (the 19th) against Richard II. that he packed parliaments—"the aforesaid king that, in his parliaments, he might be able more freely to accomplish the effects of his headstrong will, did very often direct his commands to his sheriffs, that they should cause to come to his parliaments, as knights of the shires, certain persons by the said king named; which knights, being his favourites, he might lead, as often he had done, sometimes by various menaces and terrors, and *sometimes by gifts*, to consent to those things that were prejudicial to the kingdom, and exceedingly burthensome to the people; and especially to grant to the said king a subsidy in wool, "for the term of his life," and another subsidy for certain years, thereby too grievously oppressing his people." Knighton, p. 2751. Howel's State Trials, vol. i. Holinshed makes it the seventeenth article, p. 502; and both he, and Hayward, (who by the way has it the 19th) express the article somewhat differently: "At the summons of Parliament, when the knights and burgesses should be elected, and the election had fully proceeded, he put out divers persons elected, and put in others in their places to serve his will and appetite." Hayward,

rights would be confirmed, and by professing the utmost moderation at first, even in regard to religion,—a subject on which she disclosed her plans gradually, and only as she conceived that she might do it with safety. To the Suffolk men, who were

p. 198. We have already seen that the same charge was brought against his successor; and the Kentishmen under Jack Cade complain thus in their 13th article—an article which, whether true or false, proves the understanding of men in that age. "The people of the said shire of Kent maie not haue their free election in the choosing of knights of the shire: But letters haue beene sent from divers estates to the great rulers of all the countrie, the which embraceth their tenants and other people by force, to choose other persons than the commons' will is." Holinshed, vol. ii. p. 633. By the way, the whole articles are curious: The people complained of being tricked out of their properties by great men. On the subject of early election laws, see Henry, vol. x. p. 59. We have already seen how succeeding monarchs acted. In opposition to these facts and authorities, Mr. Hume says, that, even in Elizabeth's time, "a seat was regarded as a burthen, rather than an advantage," (vol. v. p. 183.); and in a note to this he uses these words: "It appeared this session, that a bribe of four pounds had been given to a mayor for a seat in parliament. It is probable that the member had no other view than the privilege of being free from arrests." Now we have already seen that Elizabeth sent letters to the high sheriffs in the first of her reign, and says Mr. Strype, "the same day Robert Gascoyn, John Winter, Thomas Clark, &c. messengers being sent with letters to the high sheriffs, I suppose for the purpose aforesaid, Sir John Mason, treasurer of the Chamber, was ordered to pay them such sums as he should think necessary." Annals, vol. i. p. 32. We have likewise alluded to a speech upon elections in the 13th of Elizabeth; and to that as well as the answer by Mr. Bell about noblemen interfering with them, we again refer. See D'Ewes, p. 170. In the 43d of Elizabeth, a case of violence came under the cognizance of Parliament, and it was stated that the parties were ready to engage with drawn swords, that the sheriff with the utmost difficulty pacified them; and, said he, in a letter which was read to the House, "fearing lest by drawing such a multitude together, there might great danger and bloodshed happen, I made proclamation that every man should depart." Id. p. 627. Let us now

so instrumental in vindicating her right to the throne in opposition to the party for Lady Jane Gray—an act for which they were ill requited—she declared she did not mean to make any altera-

consider the case Mr. Hume alludes to, where the member was convicted of having given a mayor four pounds. Every one must be aware of the difficulty of proving bribery at an election; and that where evidence can be brought, of any sum however small having been given, large sums are always presumed. But it may be alleged, that the notions of the present times are inapplicable to the ancient. The course pursued by the commons of that age, however, sufficiently evinced the reverse, for, in that very case, they annulled all *bonds* granted for votes!—a sure proof of their idea of the extent of the corruption. D'Ewes, p. 182. An. 1571.

Mr. Hume's observations in this place are totally irreconcileable with his remarks upon the 8th Henry VI. c. 7. & 10. c. 2. which restricted the elective franchise in the shires to those possessed of freehold, to the annual value of forty shillings. He there says, "we may learn from these expressions," (those used in the statute) "what an important matter the election of a member of Parliament was now become in England," &c. vol. iii. p. 213. It is inconsistent with his theory to suppose that the commons fell back; and, therefore, we must conclude, that as Mr. Hume wrote the late part of his work first, he had formed a theory regarding the constitution incompatible with his subsequent discoveries. In regard to Beal, whose authority he treats with contempt, it may be observed, that, whether the facts narrated by him be true or false, they still afford clear evidence of the understanding on that subject of his own age; for why should he invent or relate circumstances which people never suspected the existence of? His testimony, however, derives strong corroboration from the other indisputable evidence transmitted.

Archbishop Whitgift used all his influence "to prevent unfit men, especially disaffected to the present constitution of the Church, from coming there," that is, to Parliament. Strype's Life of Whitgift, p. 508.

On this subject of corruption and undue influence at elections, we cannot forbear from remarking, that undertakers, as the agents for the crown on such occasions were denominated, were declared in 1614 to be worse than the gun-powder traitors. Journals of the Commons, p. 470. See also, on this subject, p. 478.

tion in religion: she assumed a bolder tone to the council, yet, even then, her language was extremely moderate—"that though her own conscience was settled in matters of religion, she was resolved not to compel others but by preaching of the word:" But, in a few days, she issued a proclamation, in which she intimated that she would not compel others to be of her religion—"till public order should be taken in it by common assent," —language which indicated that she expected the assistance of parliament in restoring the old worship. The most intolerant, blood-thirsty sects are ever the readiest to exclaim most loudly against the abominable cruelty and injustice of persecution for conscience-sake, when themselves are the object of it *, and, at the beginning of this reign, Parliament was incited to give licence to

* Is it possible," says Neal, in page 103, "after such a relation of things, for any Protestant to be in love with High Commissions, with oaths *ex officio*, and laws to deprive men of their lives, liberties, and estates, for matters of mere conscience? And yet these very reformers, when the power returned into their hands, were too much inclined to these engines of cruelty." As persecution, how much soever encouraged by each party against its adversaries, was regarded by its victims with every sensation of horror, so was its authors. Bishop Gardiner is thus described by a contemporary, (Ponet), "This Doctor hath a swart colour, hanging look, frowning brows, eyes an inch within his head, a nose hooked like a buzzard, nostrils like a horse, ever snuffing into the wind, a sparrow mouth, great paws like the devil, talons on his feet like a gripe, two inches longer than the natural toes, and so tied with sinews, that he cannot abide to be touched, nor scarce suffer them to touch the stones. And nature having thus shaped the form of an old monster, it gave him a venge able wit," &c. Strype's Ecclesiastical Memorials, vol. iii. p. 271, &c.

persecute by the most bitter invective, in the mouths of the Queen's councillors and expectant lawyers, against the statutes about religion which had been passed in the two preceding reigns,—statutes which they stigmatized "as bloody, and cruel, like Draco's laws written in blood, and more intolerable than any that Dionysius or any other tyrant ever made *."

Packed and guilty as her parliaments were, Mary did not find them all compliance. The first was dissolved, because it would not consent to her marriage with Philip—an opposition which proceeded rather from civil than religious motives, and, in some degree from a dread of Spaniards engrossing English offices †. The frequent dissolu-

* Strype's Ecclesiastical Memorials, vol. iii. p. 39. In 554, Cardinal Pole having been introduced into Parliament as the pope's legate, declaimed against the misery of the two former reigns. "For," said he, "those that live under the Turk may freely live after their conscience, and so it was not lawful here." Yet his object was to persuade the legislature to persecute the reformers. Fox's Martyr. vol. iii. p. 109.—But the Protestants had, after all, little cause to complain, since they suffered upon their own principles. Mary had narrowly escaped the death of a heretic in her father's time, (Burnet, vol. iii. p. 432.) and her humble solicitations to be allowed mass in her brother's reign were denied. She was told that the king could not bear with her conduct in this respect longer, "without some sudden amendment." But she answered resolutely, her soul was God's, and her faith she would not change, nor dissemble her opinion by contrary doings. "It was told her that the king constrained not her faith, but willed her not to rule as a king, but obey as a subject," Strype's Ecclesiastical Memorials, vol. iii. p. 251. See whole chapter, b. ii. c. 1. How ready Cranmer—who is called gentle, &c. was to persecute we have already seen.

† Strype's Ecclesiastical Memorials, vol. iii. p. 126, 251.

tions prove how anxious she was to try her fortune at new elections; and a band of patriots perceiving that all their efforts to serve their country in such an assembly, were unavailing, openly seceded from the Lower House*. In one instance, too, she got a memorable check, which illustrates the view we have taken of the posture of affairs. In the year 1554, (she was proclaimed in July 1553) when her *third* parliament passed a statute, reconciling the kingdom to the Romish see, they added a proviso that all settlements of the church lands which had belonged to any bishoprics, monasteries, or other religious houses, should continue unaltered, and unmolested by ecclesiastical censures or laws. Cardinal Pole, who had arrived in England as the Pope's legate, though he conceived it prudent to submit to the proviso, denounced heavy judgments against all who withheld the church's patrimony—judgments which these Catholics disregarded; but the Pope, pretending that the legate had, in this instance, exceeded his instructions, refused to confirm his act, and published a bull, by which he excommunicated all who held and refused to restore the eccle-

* Coke, 4 Inst. p. 17. There was an information filed by the attorney-general against thirty-nine members for deserting their places in Parliament, An. 1. & 2. P. & M. and Plowden, the great lawyer, was one of the number; but he pleaded that he had always attended from the beginning to the end of the Parliament, a circumstance which had escaped Mr. Strype. See Ecclesiastical Memorials, vol. iii. p. 165. The bill for repealing King Edward's laws about religion was debated six days. Burnet, p. 459.

siastical property*. The excommunication was as little regarded as the legate's denouncement of judgments; but from the conduct of the Pope, the feelings of such of the party as held none of the lands, and the temper of the Queen, the proprietors laboured under fears of ejectment†, which had a strong effect on their conduct; and Mary soon convinced them that their apprehensions were not altogether groundless. Supposing herself with child, and near her delivery, she, on the 28th of March, 1555, sent for part of her council, Lord Treasurer Paulet, Sir Robert Rochester, comptroller, Sir William Petre, Secretary of State, and Sir Francis Ingle-field, master of the Wards, and expressed to them her intention of restoring that portion of the church lands which was in the possession of the crown. The answer of the Council is memorable: "The Lords thought requisite to direct some course, whereby she might satisfy her desires to her own great honour, and *yet not alienate too much at once*

* Burnet, vol. iii. p. 530. *et seq.* p. 557, & 560. Strype's Ecclesiastical Memorials, vol. iii. p. 159. *et seq.* Neal, vol. i. p. 95.

† Burnet, vol. iii. p. 536. & 577. Some applied to the Pope for bulls of dispensation for holding those lands. Strype's Ecclesiastical Memorials, vol. iii. p. 162. Osborn says, that Sir John Parsons told him he had seen a bull amongst Selden's antiquities, confirming the rights of the possessors to the church lands: and it is not improbable that a bull might have been prepared against contingencies, though not divulged, as matters were otherwise arranged, and the Pope would naturally renounce nothing he could pretend a claim to. But, on the other hand, the bull in Selden's collection, might be in favour of an individual. Church lands sold at low rates. Osborn, p. 376.

*of the public patrimony**." Perceiving that it was vain to dissuade the Queen entirely from her purpose, they advised the erection of some religious houses; and the project was immediately executed. This declaration of her feelings, with the re-establishment of some religious houses, was followed by an attempt to persuade Parliament into a general restitution of church property; but however that body could express their zeal in cruel laws, they were not prepared for such an act of self-denial, and some of them, laying their hands upon their swords, declared they knew how to defend their own property†.

It is unnecessary to say in relation to this short reign, that it was a period inauspicious to public liberty: Besides the sources of influence which have already been developed as at this time belonging to the throne, the Catholic party were too eagerly bent upon improving their present advantage against the adverse faction, to quarrel with little stretches of prerogative, while the Protestants durst not attempt, regularly, to

* Heylin's Hist. of Queen Mary, p. 65. Scott's Somers' Tracts, vol. i. p. 55, 56. See Heylin, p. 41. as to the motives of Parliament in reconciling the kingdom to Rome; and in p. 53. the feelings upon a motion to restore the church lands.

† Heylin, p. 55. Neal, vol. i. p. 96. Parl. Hist. vol. i. p. 626. Burnet, vol. iii. p. 571, 577, 581. The parliament met in October 1555, and shewed a very different temper from what they had previously done, being equally alienated from the Queen and the clergy. A subsidy "was opposed with great vehemence. It was said that the Queen had profusely given away the riches of the crown, and then turned to the laity to pay her debts: Why did she not rather turn to the spirituality?" Id. p. 581.

oppose public measures, and the aristocracy had too deep a stake to provoke the Queen on subordinate points. The proceedings of such a reign, therefore, ought never to be cited as illustrating the ancient constitutional principles of the English government *.

Humbled by adversity, and terrified by the cruelty of government, the majority of the reformers submitted to a season of injustice, in the hope that, with the life of the reigning monarch, their calamities would terminate, and their party be raised from degradation. The patience with which many of them endured torments, in the cause of their religion, by begetting admiration, more widely diffused their principles, while it excited the deepest abhorrence against Mary and her husband, and though sham-plots, the resort of a wicked party to obtain a pretext for cruelty, were devised, yet the real spirit of revolt, manifested in repeated insurrections, which, though quelled, did not either exhaust, or break, the spirit of the party †, would lead us to infer that

* To strengthen her adherents with military power, Mary granted licences of retainder to them against the laws. About two thousand retainers were thus kept up. Elizabeth also granted licences, but neither so many as her sister had done, nor for such a number of retainers by any individual. Thus Bishop Gardiner had 200, while Archbishop Parker, in the next reign, had only 40, and the Duke of Norfolk 100. Strype's Ecclesiastical Memorials, vol. iii. p. 479. Mary also raised an extraordinary guard. Id. p. 426.

† The Protestant party now appealed to the constancy of their martyrs as a proof of the goodness of their cause; but their language was very opposite in the preceding reign. Latimer, in his third sermon before the king thus expresses himself: "This is no good ar-

this reign could not have been long protracted*. Many of the leading reformers, however, fled into Protestant countries, where they prayed

gument, my friends. A man seemeth not to fear death, therefore his cause is good. This is a deceiuable argument. He went to his death boldly, *ergo*, he standeth in iust and honest quarrell.

"The anabaptists that were burnt heere in many townes in England, (as I heard of credible men, I sawe them not myselfe) went to their death even *intrepide*, as ye will say, without any feare in the world, cheerefully. Well, let them goe. There was in the old Doctors' times another kinde of poysoned hereticks, that were called Donatists: and these hereticks went to their execution, as though they should have gone to some iolly recreation or banket, to some belly cheere, or to a play. And will you argue then? He goeth to his death boldly and cheerefully, *ergo* he dieth in a iust cause?" &c. P. 55, 56. The Lutherans abroad called the English martyrs in Mary's reign, "the Devil's martyrs," because they denied the corporal presence of Christ in the eucharist. Note by Maclaine to his translation of Mosheim, vol. iv. p. 388.

The Protestants appear to have been exceedingly imprudent in provoking vengeance against themselves. After some executions of those engaged in Wyatt's insurrection, a cat, in the habit of a priest, with a shaven crown, and a piece of paper in her fore claws, in the shape of, and representing the wafer, was hung upon a gallows, near the cross, in Cheapside, on which one of the rebels had been hanged. Strype's Ecclesiastical Memorials, vol. iii. p. 120. Heylin, p. 47. But the following, which we shall give in the words of Bishop Burnet, was much worse. "There were," says he, "many ludicrous things every where done in derision of the old forms, and of the images: many poems were printed, with other ridiculous representations of the Latin service, and the pageantry of their worship. But none occasioned more laughter than what fell out at Paul's the Easter before; the custom being to lay the sacrament into the sepulchre at evening, on Good-Friday, and to take it out by break of day on Easter morning. At the time of the taking it out, the quire sung

* As for sham plots, see Burnet, vol. iii. p. 569. For discontents, p. 649. A small supply was given in 1558, after several days debate, though the situation of affairs was urgent, p. 651.

to be allowed that freedom in the worship of their creator, which was inhumanly denied them in England. Had they consulted their own bosoms, they might not have been disappointed in the re-

these words, Surrexit, non est hic; *He is risen, he is not here.* But then the priest looking for the host, found it was not there indeed, for one had stolen it out, which put them in no small disorder; but another was presently brought in its stead. Upon this a ballad followed, that their God was stolen and lost, but a new one was made in his room. This raillery was so salt, that it provoked the clergy much. They resolved ere long to turn that mirth and pleasantness of the heretics into severe mourning." vol. iii. p. 524, 525. By the way, this passage by the right reverend and worthy prelate is scarcely in good taste, though there is a great apology for the Protestants of that age: out of 16,000 clergymen, 12,000 had been turned out of their livings on account of their marriages, and they naturally were instigated to revenge themselves by satire. But the folly was gross. Some of the Protestant preachers in their private congregations went very far against the Queen herself: one Ross, used to pray, "*that God would either turn her heart from idolatry, or else shorten her days.*" Their mirth at her false conception, for the circumstance "made much game," was extremely provoking. Heylin, p. 47.

The kingdom is said to have been greatly afflicted by divine vengeance during this reign, which was manifested in pestilence, famine, immoderate rains, and at other times immoderate droughts, tempests, deluges, strange diseases, &c. &c. the like of which had never been known before. Strype's Ecclesiastical Memorials, p. 476. Burnet, p. 661. Elizabeth's reign was free from such evils; but then the people suffered from another source. "'Tis strange," says Strype, "how sorceries prevailed, and the mischiefs they did." Annals, vol. i. p. 7. Bishop Jewel, in a sermon before her majesty, says, "By the way, to touch a word or two of the matter, for that the horrible using of your poor subjects enforceth thereunto. It may please your grace to understand, that this kind of people, I mean witches and sorcerers, within these few last years, are marvellously increased within your Grace's realm. These eyes have seen the most evident and manifest marks of their wickedness. Your grace's subjects pine away even unto the death, their colour fadeth, their flesh rotteth, their speech is benumbed, their senses are bereft. Wherefore your poor subjects' most humble petition unto your Highness is, that the laws touching such male-

sult, as they would there have discovered that intolerance was not confined to Catholics: The rigid Lutherans refused them an asylum, because they rejected the idea of the corporal presence of Christ in the Sacrament *. But, in France, Geneva, and those parts of Switzerland and Germany,

factors may be put in due execution. For the shoal of them is great, their doings horrible, their malice intolerable, the examples most miserable: and I pray God they never practise farther than upon the subject." Jewel's Works, p. 204. Many have laughed at this Queen's successor for his superstition; but the opinions which he maintained were universal in that age. Parliament passed statutes against witches. Burghley had such an opinion of astrology, that he had Elizabeth's nativity cast, to ascertain whether she would marry, and wrote out the judgment with his own hand, in Latin. A copy of it is preserved by Strype. Annals, vol. ii. p. 16. Appendix, No. IV. Sir Thomas Smith " stutied astrology much." Id. p. 17. In an after age, Sir Matthew Hale declared that he had no doubt whatever of witchcraft. Howel's State Trials, vol vi. p. 699. The whole trial and matter furnished th r, are remarkably curious. Addison, at a later period says, " I cannot forbear thinking that there is such an intercourse and commerce with evil spirits, as that we express by the name of witchcraft." Again, he says, rather unphilosophically, " I believe, in general, that there is such a thing as witchcraft; but, at the same time, can give no credit to any particular instance of it." Spect. paper on Witchcraft, White Mole. It is probable that all the phenomena described by Jewel really occurred: for, whoever will look into Bryan Edwards' History of the West Indies, will find that the consequences of the imaginary powers of Obeah upon the negroes are not inferior to the bishop's description. A negro who suffers under this imaginary evil, " believes himself to be the victim of an invisible and irresistible energy. Sleep, appetite, and cheerfulness forsake him; his disturbed imagination is haunted without respite; his features wear the settled gloom of despondency: dirt, or any other unwholesome substance, becomes his only food; he contracts a morbid habit of body, and gradually sinks into the grave." Vol. ii. p. 91. Edit. 1793.

* Note by Maclaine to his translation of Mosheim, vol. iv. p. 388. Edin. 1819.

where the reformation had been more complete, they were received, and treated with the utmost kindness. Yet exile, and all the sufferings of their party, could not inspire them with unity, or forbearance towards each other. King Edward's liturgy had been regarded by many of the English Protestants as only an approach to reformation; and farther alterations were meditated. Part of the exiles, therefore, who disliked the ceremonies, as savouring too much of the dregs of popery, resolved to follow a purer worship; but another party, maintaining that, however the matter might be viewed abstractly, this was not a time for splitting upon minor points, and giving their enemies an advantage, by the restless spirit of change which their conduct implied, adhered strictly to the service-book. Forgetting their mutual grand adversaries, these parties quarrelled bitterly upon this subject: Foreign divines were appealed to, who, of course, interfered only to widen the breach; and the nonconformist party having got the approbation of Calvin, were more strongly attached to their own opinions, while they imbibed, or rather were confirmed in those republican principles of church government, which afterwards distinguished so great a portion of that body who were denominated Puritans. To this schism has been traced the commencement of that great division of Protestants into conformists and nonconformists, which was, in an after age, productive of such consequences; but appearances had indicated something of the kind earlier, and even in England,

they could not agree in the very hottest hour of persecution. Notions regarding predestination, free-will, and grace, which subsequently became so important, even then agitated the reformers, while some professed arianism and other tenets, equally remote from the ordinary belief *.

But, however the reformers might disagree amongst themselves, they all, as a body, looked forward to Elizabeth as to a deliverer, and they were not disappointed, though her measures indicated the spirit of a politician rather than of a religionist. Dangers beset her very entrance to the throne, and seemed to thicken upon her in the progress of her reign. The catholic party, numerous and formidable, could not easily bear the overthrow of their religion, accompanied with individual disgrace, nor its ministers and great adherents relinquish political as well as ecclesiastical ascendancy: and their predilections were encouraged, their plans for recovering the superiority fomented, not only by the Pope, but by foreign princes who wished to embroil English affairs, while the Romish clergy, driven from their livings, were ever ready to stimulate flagging zeal and flatter it with hope. Bigotry, when associated with politics, besides the black passions to which it directly gives birth, covers with a pretended holy garb, even to one's own eyes, the most selfish and malignant;

* Strype's Ecclesiastical Memorials, vol. iii. c. 18, 31, 33, 41, 47. Life of Grindal, p. 10. Heylin's Hist. of Queen Mary, p. 59. *et seq.* Strype's Annals, vol. i. p. 103. Burnet, vol. iii. p. 612. *et seq.* Neal, p. 103. *et seq.*

while, by shutting against its opponents every avenue of sympathy, the real source of moral feeling, it stifles the voice of conscience, and, by gaining the support of a faction, kindles indignation against public reproach, that would otherwise humble the guilty under its lash. It was necessary to disarm such a body, it was prudent not to drive them to despair, it was equally politic and just to resist in their favour the violence and vengeance of the protestants; and too much praise cannot be given to the wisdom of Elizabeth's council, at least in the early part of her reign. Her great minister Cecil was the first to broach the principles of toleration, and point out the only grounds upon which any interference with religious sects can be justified *. But Elizabeth shewed that

* Heylin tells us that Cardinal Pole dissuaded from persecution "following therein, as he affirmed, the counsel sent unto the Queen," (Mary) "by Charles the Emperor, at her first coming to the crown, by whom she was advised to create no trouble unto any man for matter of conscience, but to be warned unto the contrary by his example, who, by endeavouring to compel others to his own religion, had tired and spent himself in vain, and purchased nothing by it but his own dishonour." Hist. of Queen Mary, p. 47. Hence I am not sure that I have not gone too far in ascribing the merit to Burleigh of first broaching the principles of toleration. But his whole paper is excellent. Scott's Somers' Tracts, Vol. i. p. 164, *et seq.* Whoever attentively peruses it may question the account given by certain historians of the cause of Elizabeth's policy towards Scotland. It appears to have been chalked out by Burleigh at the very beginning of her reign.

In regard to persecution, he says, "I account that putting to death doth no ways lessen them, since we find by experience that it worketh no such effect, but like the hydra's heads, upon cutting off one, seven grow up, persecution being accounted as the badge of the church, &c.; so that, for my part, I wish no lessening of their num-

her forbearance towards the catholics savoured of partiality, on account of their avowed political principles, which accorded with her own ideas of prerogative, while, for an opposite reason, she entertained an aversion to the puritans *. The pomp, ceremonies, and incomprehensibilities of catholicism, inspire the vulgar mind with awe and veneration for the clergy, who, when they depend in any degree upon the prince, are generally disposed to advance the prerogative that it may react in their own favour: it is not the religion of the heart, but of the imagination, which enslaves a people, and Elizabeth appears to have ardently desired the advantage of the latter. She declared that religion had, under her brother Edward, been stript of too many of its ornaments, and she laboured to restore them, assigning as a reason, that the catholics might join the English church when they perceived that the departure from the Romish was not overgreat: she preserved a crucifix in her own chapel, and reluctantly acquiesced in their removal from other churches: she insisted on retaining the vestments of the clergy, which were now ab-

ber but by preaching, and by education of the younger under good masters." P. 167. He alleges that the people of all ranks loved Egypt chiefly for the flesh pots. Ib.

See a letter from Sir F. Walsingham to a French Gentleman in regard to the principles of Elizabeth's government in religious matters, in Burnet, vol. iii. p. 751.

* Elizabeth told Sir Francis Knollys, that "she was as much in danger from puritans as papists." Strype's Life of Whitgift, p. 362. See in Appendix, p. 76, *et seq.* the points of Doctrine Disputed, and in Annals, an order to have wafer-bread—"for the giving the more reverence to the holy mysteries." Vol. i. p. 165.

horred by a great part of the people: She ordered a committee of divines to review King Edward's liturgy, and strike out all offensive passages against the Pope, and to make the people's minds easy about the corporeal presence of Christ in the sacrament. Perceiving how full of intrigue and zeal for the advancement of their order, the Romish priesthood were from their celibacy, which cut them off from the common sympathies of mankind, she tried to prevent the English clergy from marrying, and would have absolutely forbid it, had it not been for the interference of her great adviser Secretary Cecil. Though she was thus far ruled, she never could be prevailed upon to revive the law of Edward VI. which authorized the marriage of ecclesiastics, but only connived at what was not fully warranted by law—a course which kept many of the leading clergy, who were married, at her devotion *.

But it may not be improper to take a view of

* There was a strong Lutheran party in the kingdom who believed in the real presence, &c.—Strype's Annals, vol. i. p. 53. In proof of the text generally, see Id. p. 81, 88; the whole of Chap. xiii. p. 214, *et seq.* Chap. xli. xlii. xliii. Burnet, vol. iii. p. 676, *et seq.* Neal, p. 122, *et seq.* Strype's Life of Parker, p. 96, 107-8-9. Archbishop Parker being married himself, was naturally very anxious for the restriction upon the marriage of the clergy being taken off; and I conclude that he had been guilty of a little pious fraud in regard to the story of five or six priests being prosecuted at Worcester for having five or six wh—s a-piece—a fact, "which," says Strype, "was so notoriously scandalous, that the said Bishop, in a sermon at the Cathedral a few days after, spake of it; and took occasion thence to shew how necessary it was to allow priests marriage." Id. p. 78. In 1572, the people were much alarmed for the Queen's safety in consequence of the number of catholics about the court. Id. p. 352.

the various causes of the great influence in the state which was centered in this queen's person. The aristocracy, with a few exceptions, were, as has been already remarked, at the commencement of her reign, indifferent to religion. Their

See Heylin's History of Elizabeth, p. 111, 123-4. In these two last pages we have a proof of the pomp and pageantry in worship which she proposed to establish. When a Mr. Nowel had spoken less reverently than she wished of the sign of the cross, she called aloud to him to return from that ungodly digression to his text. "On the other side, when one of her divines had preached a sermon in defence of the real presence, on the day commonly called Good-Friday, anno 1565, she openly gave him thanks for his pains and piety." P. 124. All this of course meets with the approbation of Heylin. Elizabeth was always a politician: In her sister's time the test of heresy was transubstantiation or the real presence, and Elizabeth having been asked what she thought of the words of Christ, "This is my body," —whether she believed that the true body of Christ was in the elements, is said to have answered thus:

"Christ was the word that spake it,
He took the bread and brake it,
And what the word did make it,
That I believe and take it."

In this manner she escaped from the difficulty; yet had her object been more than to secure a party, she would not have acted so differently when she became queen. But the wisest doctors amongst the protestants are justly accused by their enemies of constantly changing their opinions on this subject. "As unto Dr. Cranmer, late Archbishop of Canterbury in this realm," said Dr. Feckenham, Abbot of Westminster, in Parliament, anno 1559, "How contrary was he unto himself in this matter, when, in one year, he set forth a chatechisme in English and dedicate the same unto King Edward VI. wherein he doth most constantly affirm and defend the real presence of Christ's body in the holy eucharist; and very shortly after, he did set forth another book, wherein he did most shamefully deny the same." Dr. Ridley, at one time, urged transubstantiation in the keenest manner, and then deserted it. Scott's Somers' Tracts, vol. i. p. 83. Their later doctrine seems to have been consubstantiation or impanation. Yet these doctors were ready to burn all that differed from what they happened to believe at the moment.

whole object, from the beginning of the Reformation, seems to have been the plunder of the church. While they framed such bloody laws against Protestants in the preceding reign, they engrossed the livings of the clergy with the most unblushing effrontery; and the same peers who had voted for king Edward's laws, passed those in Mary's reign, and now again were equally complaisant to Elizabeth. The commons were indeed changed, for elections were freer, though this queen, like her predecessors, endeavoured to procure the nomination of particular individuals by bribes and by letters directed to the high sheriffs; but the great body of the gentry are implicated in the charge of robbing the church in Elizabeth's reign, as well as in the three preceding. The patrons frequently kept churches vacant that they might draw the livings; and, says Bishop Jewel, "I speake not of the curates, but of parsonages and vicarages, that is, of the places which are the castles and towers of fence for the Lord's temple. They seldome passe now a-days from the patrone, if he be no better than a gentleman, but either for the lease or for present money. Such merchants are broken into the church of God, a great deale more intolerable than were they whom Christ whipt out of the temple. And this is done, not in one county, but thorough England. A gentleman cannot keep his house unless he haue a parsonage or two in farme for his provision." When reproached with their sacrilege, they insultingly bade the preachers of the Gospel live as the

apostles did. But the worthy Bishop shews that this could not be expected, as the preachers thought themselves too good to become the others' slaves. "Therefore," says he, "they are weary and discouraged, they change their studies, some become prentices, some turn to physic, some to law, all shun and flee the ministry;" whence he prophecies desolation to the church *. Men who acted upon such principles, and yet were scarcely secure in their property, were not likely to quarrel with points of ceremony or discipline; and therefore, the compliance of Parliament, on many occasions, is not wonderful. But had it been otherwise, Elizabeth must still have had a commanding influence in public affairs. From the numbers and zeal of the Catholics, the reformers were kept in perpetual alarm; and, as they re-

* Jewel's Works, Sermons, p. 181, 191, 194. "The noblemen and gentlemen, patrons of benefices, give presentations of benefices, either to be farmers themselves, or else with exception of their own tenths, or with some other condition that is worse than this," p. 181. He says that those corrupt patrons "leave to take charge over the people, blinde Sir Johns, not only lacke latine, but lacke honesty, and lacke conscience, and lacke religion." Id. p. 185. The state of morals was represented by this prelate as extremely corrupt. "Theft, &c. were so common, as if it were not only lawful but commendable; as if sinne were no sinne, and hell-fire a fable," p. 221, 241. Strype's Life of Whitgift, p. 509. Hayne's State Papers, p. 586. Mr. Hume has quoted a passage from this paper, which was written by Cecil, afterwards Lord Burleigh, about the decay of obedience in civil policy, to shew that the ideas of the people, in Elizabeth's time, had become more liberal than in the more ancient; but from Cecil's words, that "it would astonish any wise and considerate person to behold the desperation of reformation," it is evident that he alluded to the non-conformists. Ib.

garded the Queen as the bulwark of the Protestant cause, so the Papists considered her life as the grand obstacle to their recovering the ascendancy. By joining the Romish faction, she might have dashed all the counsels of the ruling party;—and, when crossed in her measures, she, at one time, hinted the possibility of her being forced, by their perverseness, to throw herself into the arms of the Catholics,—a hint which excited the utmost dismay *. The reformers themselves, though they all agreed in their hatred of the Papists, and in regarding the Queen as necessary to them against that body, were prevented by their mutual dissensions from acting in concert, to obtain a reform of what many deemed imperfect in the new establishment and creed, while the severity, which was extended to the various sects, fell short of what each would have inflicted on all its adversaries †. Though, therefore, by adopting high church principles, and favouring the Lutheran party, she disobliged the other sects, she seemed only to be in the same situation as that she would have found herself in, by making the principles of any other sect the rule of her government.

* Strype's Life of Parker, p. 109. See Annals, vol. i. p. 452, 453, as to the doctrine of the English Church.

† Neal has occasionally a remark upon the intolerance of the nonconformists or puritans themselves; but the general strain of his work, is to stigmatize, as the last degree of tyranny, all interference with the consciences of the puritans, whom he represents as harmless, while, in truth, they aimed at political and ecclesiastical ascendancy, and thirsted for an opportunity of playing the game of their oppressors.

The supremacy was immediately restored to the crown, and matters were settled nearly upon the same grounds as in her brother's reign. But, availing herself of her situation, she affected to have derived from the act of supremacy, though it conferred no such power, a discretionary right of regulating ecclesiastical affairs *. The act contained a clause, however, authorizing the erection of a new court, that of the high commission, from whence sprung many alarming evils which we shall afterwards detail.

In the course of this reign, the higher classes became imbued with a spirit of religion, to which hitherto they had been strangers. Families were now well educated; and, as the clergy were the teachers, the principles of the Reformation, which, from the nature of things, then so deeply agitated its ministers, were warmly transfused into their pupils. The majority of the clergy, however, being at that time hostile to the ceremonies retained, as well as to the church government, instilled their own ideas into the minds of the rising generation. The clergy were most interested in the nature of the ecclesiastical establishment; the people, including all ranks, in the purity of worship and doctrine. The clergy were no doubt anxious on this point too, and being well aware that, without popular support, they never could attain their object as to government, they,

* In 1559, she gave this liberal interpretation of the act herself, officially. Strype's Annals, vol. i. p. 161. Heylin's Hist. of Queen Elizabeth, p. 109.

from both motives, zealously dwelt upon the deformities which, they maintained, equally stained the doctrine and worship of the church. This spirit not being, latterly, subdued by fears about the church property which the aristocracy had acquired, for in the progress of this reign it was too well confirmed by time to be recovered by any union between the sovereign and the more zealous Catholics, was calculated to bring about a greater change in religion; but it was counteracted, in the mean time, by a terror of wild sects, to whom levelling principles were ascribed, and the evident ambition of the leading clergy who espoused it, as well as by the necessity of entrusting great powers to the executive, both to secure the Queen to the Protestant cause, and to enable her to defeat the designs of the Romish party, encouraged and assisted by foreign princes.

Episcopal government, while it gave considerable livings to a few, left the great body of the clergy in poverty; and, by the system of patronage, and the power of the bishops, defeated the ambitious hopes of the aspiring, who conceived themselves qualified to take a lead in religious affairs. These were more inclined to owe their promotion to the popular suffrage, than to the appointment either of the sovereign or of individual subjects, both from the different kind of qualities likely to recommend them, and from a hope of vast power, and of recovering by popular assistance, the church property, out of the sacrilegious hands that detained it, as well as of exempting their body from

every species of tax. From this, as well as, it is to be hoped, from piety, they maintained that the only true church was the Presbyterian; that the church government of England was unlawful and false, the offices of that church being invented by the magistrate, "and so no members of Christ's body:" "that she" (the Queen) "injured the church to keep the true officers out; that she maimed and deformed the body of Christ; that every Christian magistrate was bound to receive the government by pastors, doctors, elders, and deacons, into the church within his dominions; whatsoever inconveniences might follow from it; that those who withstood it, held it to be lawful for her majesty and the state to bid God to battle against them." "That none could be good and sound subjects that defended the present false, bastardly, unchristian, ecclesiastical establishment—and that they who did so were traitors to God and his word." They therefore insisted that all bishoprics and deanries should be dissolved; that all patronages should be taken from her Majesty and others, and all spiritual offices be filled by popular election, or by their elderships; while they declared it to be sacrilege to detain from the church the property which had belonged to the religious houses: "That the ministers and others of the ecclesiastical function ought to be exempt from paying first-fruits, tenths, subsidies, and other impositions: like as the priests of Egypt were even under a heathen king." That ecclesiastical laws should be made by their synods and assemblies, and ecclesiastical causes, it is

not easy to determine what they would have comprehended under this head, be cognizable only by their eldership, consistories, or presbyteries, then, on appeal, by the provincial courts, and finally, by their assemblies. "That *all* persons, as well as meaner persons, must willingly be ruled and governed, and must obey those whom God has set over them —that is," observes the writer, supposed to be the Lord Keeper Puckering—"the just authority of ecclesiastical magistrates, and must lick the dust of the feet of the church: That her Majesty, being a child of the church, is subject to censures of excommunication by their elderships as well as any other people: That no man ought to aid, comfort, salute, or *obey*, an excommunicated person; and, that as long as any person is excommunicated, he cannot exercise the magistracy." This doctrine, by natural inference, arrogated for the church the right of deposing princes and other magistrates, since a sentence of excommunication was attended with that effect; but these preachers expressed their sentiments about deposing princes, by an act of the estates, or parliament particularly, and circumscribing their power, nay, altering the whole frame of the constitution, in language far more unequivocal *. Their intolerance

* Strype's Annals, Vol. iv. No. 94, *et seq.* The language of the Puritans against the established ministry, whom they called the *supposed* ministry, is extraordinary: "Will you come unto them and see what they are? Alas! you can behold here no other sight, but a multitude of desperate and forlorn atheists, that have put the evil day far from them, and endeavoured to persuade their own hearts, that God's holy ministry, and the saving health of men's souls, are matters

may be inferred from the consequences which they wished to attach to excommunication; but they did not stop there. They insisted that the judicial laws of Moses, for punishing certain offences by death, ought to be observed; and that neither prince nor law, could in justice save the lives of wilful offenders, such as, blasphemers

not to be regarded. You shall find amongst this crew, nothing else but a troop of bloody soul-murtherers, sacrilegious church-robbers, and such as have made themselves fat with the blood of men's souls, and the utter ruin of the church. The whole endeavour of which cursed generation, ever since the beginning of her Majesty's reign, hath tended no other way than to make a sure hand to keep the church in bondage; that being bound in their hands, it should not dare, for fear of being murthered, to seek for liberty. Of these men contained within the number of proud and ambitious prelates, our lord archbishop and bishops, god-less and murdering non-residents, profane and ignorant, idol shepherds and dumb dogs, I will say no more in this place but this—How long, Lord, just and true, dost thou suffer thine inheritance to be polluted and laid waste by this uncircumcised generation? O! thou that hearest the prayer," &c.—"with speed thrust out these caterpillars as one man out of our church: and let the memory of them be forgotten in Israel for ever." Strype's Life of Whitgift, p. 346, 347. See also Neal, vol. i. p. 367, for a proof of the virulent invective employed by the non-conformists. Thus spoke the puritans of the bishops, and in this they followed the example of all parties. The papists lamented the decay of all goodness, civil subordination, and learning. "But obedience is gone," said Dr. Feckenham in 1559, "humility and meekness clean abolished, virtuous, chaste, and strait living abandoned, as though they had not been heard of in the realm; all degrees and kinds being desirous of fleshly and carnal liberty, whereby the springalls and children are degenerate from their natural fathers, the servants contentious of their master's commandments, the subjects disobedient unto God and all superior powers." Scott's Somers' Tracts, vol. i. p. 84. The papists called the people "swine, and rude, and rash people." Jewel, p. 391. "It is thought," says Jewel in his answer to Harding, to be the surest fence and strongest ward for that religion, that they" (the people) "should be kept still in ignorance and know nothing. Mr.

of God's name, conjurers, soothsayers, persons possessed of an evil spirit, heretics (a word which, of course, comprehended all who disputed their discipline, doctrine, or laws,) perjured persons, *wilful breakers of the Sabbath-day*, neglecters of the sacrament without just reason, (in plain English, those who dissented from them in religious matters,) such as are disobedient to parents, or that curse them, incestuous persons, a daughter committing fornication in her father's house, adulterers, all incontinent persons, saving simple fornicators, and all conspirators against any man's life. Some of the offences enumerated are ridiculous, but attributable to the superstition of the age; the punishment proposed for some others is absurdly severe, and, though some of them are, unquestionably, such as must fall under the rigorous chastisement of the laws in every well governed state, yet

Harding both in this place, and also before, calleth them all dogs and swine, as insensible and brute beasts, and void of reason, and able to judge and conceive nothing," p. 406. "Tertullian saith, the heathens, in the time of the primitive church, were wont to point out, in mockery, the God of the Christians with an ass's head, and a booke in his hand, in token that the Christians professed learning, but indeed were asses, rude and ignorant. And do not our adversaries the like this day against all those that professe the gospel of Jesus Christ? And, say they, who are they that favour this way? None but shoemakers, tailors, weavers, prentices, such as never were in the university, but be altogether ignorant and void of learning." Id. p. 203. The reformers were not behind the Catholics in abuse: even Wickliffe's charges against the popish clergy, that they debauched the wives of the nobles, gentry, &c. "promising to make answer to God for their sins," &c. were revived. Strype's Ecclesiastical Memorials, vol. iii. p. 112. *et seq.* See Annals, vol. i. p. 123, in proof of the right which was claimed to depose princes, who, it was said, all owed their title only to election.

it is quite indisputable, that those against heresy, &c. struck at every sect but their own, and consequently breathe an intolerance, which leaves no doubt that, had these men, who loudly complained of persecution for conscience' sake, been allowed the power they demanded as a divine right, they would have set an example of cruelty and oppression, which would have obliterated the memory of sufferings under the hierarchy, or made them appear mild in the comparison. As some of their tenets were subversive of civil government, so others were equally so of civil jurisdiction. For they held, "that all matters arising in their several limits, (though they be merely civil and temporal) *if there happen to be breach of charity, or wrong be offered by one unto another, might* and *ought* to be composed by the eldership; and he that should refuse to be advised. should be excommunicated," (that is, be in the wretched condition of persons whom none ought to aid, comfort, salute, or obey.) "That ministers of duty might, but should determine and decree *of all,* both *civil* and ecclesiastical causes, *though not of the very fact, as civil magistrates do, yet touching the right and what the law is, for that thereof they are appointed by* God to be administrators *.

* Strype's Annals, vol. iv. No. 94. In regard to the tenets of the nonconformists, see Life of Grindal, p. 1, 6, 13. Life of Parker, p. 220, 413. Several of them enjoyed dignities in the church. "They are content, said the Archbishop of York, to take the livings of the English church, and yet affirm it to be no church." Ib. and p. 414; see also (446,) (447,) 492. "It is remarkable also," says

Taken together, the pretensions of these men would, if conceded, have had the effect of absolutely transferring both the legislative and judicial power of the state to their own body: But their folly was equal to their presumption. They demanded, as a divine right, the restitution of the church's patrimony, as if the proprietors would have parted with it, by any thing short of a revolution; and, though they might have, for a time, embroiled the state, it is impossible that mankind should have, voluntarily, long submitted to their tyranny. The necessary consequence would have been, that those, who had not an immediate interest in supporting the clergy, would have assisted the civil government in either

Strype, "what resolutions were given to other questions, found amongst the letters of Lord, another of their ministers, which were also seized: Namely, "How when all the church's revenues, that then were, should be converted to maintain their presbyteries, her Majesty should be recompensed for her first-fruits and tenths: For that they would pay none, as being unlawful; and how the archbishops and bishops, &c. should be provided for, that the land be not filled with rogues;"—which opprobrious term was applied to the prelacy, who were to be turned a-begging. Life of Whitgift, p. 294. *et seq.* 346, *et seq.* 416. Ap. p. 80. Annals, vol. i. p. 452. Heylin, p. 132. The following is a character of puritanism! "Imagine that you see the external face of that church, where you might see so many thousand superintendants, so many elderships advanced in and about the church, to make orders, and to censure at pleasure, where the people give voices, the laity lay on hands, the majesty of the prince excluded from all sway in the presbytery: All antiquity forlorn; all councils utterly repelled; doctrine divided from exhortation; laymen deacons of the church; parish bishops; parrot preachers; the universities degraded of the privilege of granting degrees; *cathedral churches by greedy wolves spoiled;* all courts of justice overthrown or impaired by the consistorial court of elders." Life of Whitgift, p. 345.

subduing the ecclesiastical to a condition compatible with the general welfare, or in entirely rooting out the system as pregnant with public and private mischief.

Such daring principles, however, were avowed by a part of the nonconforming clergy only. The great body indicated by their language that they conceived prayers, and petitions to the governors, the only legitimate way of seeking a reformation of abuses: In civil affairs they professed principles approaching to passive obedience, and in religious, while they only prayed for relief, a readiness to submit to punishment, where they could not conscientiously comply with the established ceremonies or doctrines. But, as they opposed the hierarchy, and the bent of the government, they were, according to the never-failing practice of ambitious rulers, confounded with their most violent brethren; the submissiveness of their language being attributed to weakness and fear on the one hand, and to the desire of obtaining good livings in the very church they abused, on the other, not to any real difference in their sentiments or in the tendency of their principles: And, it cannot be denied, that, though a few of the nonconforming clergy would appear to have desired an abrogation of some ceremonies only, the practice and principles of the majority of those who affected such meekness, did not correspond with their professions. It was not simple toleration, but power, together with the whole ecclesiastical revenues, which they aspired to.

While they denied the lawfulness of the established church, they did not scruple to accept of livings under it:—while they professed obedience in all civil affairs, they did not mean to confine their legislative and judicial powers, which they would have had independent of civil authority, to matters that, in common sense, are strictly spiritual. They denied toleration, and, as their censures were to be accompanied with other than spiritual consequences, they would have drawn within the pale of the church, the properties, liberties, and even lives of the people. When this is considered, though all intolerance towards them must be condemned as impolitic and unjust, yet it is impossible to have much sympathy with their sufferings, since the punishment met rather their ambitious projects than their conscientious scruples, and fell far short of what they themselves would have inflicted on every sect that differed from them.

As, with the exception of such as expected distinction in the elderships, the nonconforming clergy only were interested in entertaining such views, we may presume that they were confined to that body. The people considered those matters in a religious light only, and, from what appears, would have been satisfied with a dispensation from ceremonies, and some slight alterations in doctrine. The intolerance towards them, therefore, assumes a different character; and, had the hierarchy not been blinded by selfishness and love of power, they would have relaxed the ceremo-

nies, &c. to reconcile the people and detach them from ambitious preachers. Instead of suspending, for trifling nonconformity, men of talent who held livings in the church, and thus equally creating enmity to the establishment in such individuals, and recommending them to the people, while they supplied their places with persons notoriously insufficient, as shoemakers, tailors, millers, and cobblers *, they ought to have connived at trivial marks of nonconformity, and secured the talents of good preachers for the support of the present system.

The higher classes, however they might desire to circumscribe the power of the hierarchy, and wish a reformation in regard to ceremonies, non-residences, pluralities, and even doctrine, were not likely to promote the ambitious views of the nonconforming clergy, whose object it was to abridge the privileges and lessen the property of the aristocracy: And the hierarchy, equally with the ordinary ministers of the crown, adopting the language of their popish predecessors whom they had supplanted, (for the language peculiar to men in place, and to those out of place, has been nearly uniform in all ages,) laboured to convince the aristocracy, that, however the sectaries might pretend religious motives for disobedience, their real object was to subvert the rights of property, and introduce the same equality into the state as they called for in the church. "Surely," said Arch-

* Neal, vol. i. p. 473; see also p. 367, 428, 476—9, 489.

bishop Parker, in a letter to the Lord Treasurer, "if this fond faction be applauded to, and born with, it will fall out to a popularity" ("he meant a parity and equality in the state as well as the church)" observes Strype in a parenthesis; "and, as wise men think, it will be the overthrow of all the nobility *." On another occasion, he remarked to Lord Burleigh, "that how secure soever the nobility were of these puritans, and countenanced them against the bishops, they themselves might rue it at last; and that all these men tended towards, was to the overthrow of all honourable quality, and setting a-foot a commonwealth, or, as he called it, a popularity †." But the view which was taken of their alleged designs, is so concisely stated in the following passage from Attorney-General Popham's speech in the Star-Chamber, at the trial before that court, of Sir R. Knightly, and others, for sedition, that we shall make no apology for inserting it. "This sort of sectary, says he, "are of no settled state, but seek to transform and subvert all. These men would

* Strype's Life of Parker, p. (447.); see also p. 492. This archbishop alleged that his object in enforcing uniformity was regard for the law. He, therefore, in 1575, warned the Lord Treasurer to watch over the puritans. "Doth your Lordship think," says he, "that I care either for cap, tippet, surplice, or wafer-bread, or any such? But, for the law so established, esteem them." Ib. It is sufficiently proved in the text, that it was not an idea peculiar to the Stuarts, that the Presbyterian establishment was inconsistent with monarchy. See farther upon this subject a letter from the Dean of York to Lord Burghley, dated 6th October, 1573, in Murden's Collection, p. 261. See also Strype's Annals, vol. iv. p. 142.

† Strype's Life of Parker, p. (447.)

e government in every several congregation, rally in each province, in every diocese, yea, very parish, whereupon would ensue more chief than any man by tongue can utter. y themselves cannot agree amongst themes, but are full of envy and emulation; for t greater emulation than to fall to contention, and from contention proceed to violence? they stay not here, nor contented with railagainst the church and the state thereof, proceed to court and the commonweal, that things may contribute to preserve unity amst the brethren: No law, no order left, all priety" (property) "of things taken away and founded.—But of what sort are these secs? of the very vilest and basest sort, and e must make confusion of all state, and so adce themselves in their congregations: This r course, and this their purpose; so the heel ld govern the head, and not the head the heel, iese men be allowed*."

It may well be admitted, that, however a few demagogues might feel, the great body of the people entertained no such intentions, and that the hierarchy and ministers of the crown, exaggerated every motion of the nonconformists to promote their own authority. But, in con-

* Howel's State Trials, vol. i. p. 1263 and 1264. "One (Mr. Dering) told the Queen openly in a sermon, she was like an untamed heifer, that would not be ruled by God's people, but obstructed his work." Life of Hooker, fol. edit. See p. 8. *et seq.* in proof of the text.

sidering the causes of the influence in the government enjoyed by Elizabeth, it is enough to shew that such intentions were ascribed to the sectaries: For, if men, who had a stake in the country, were persuaded that such projects were contemplated, they would naturally rally round the throne, and strengthen the prerogative for their own supposed preservation: and the folly of demagogues was always ready to afford a pretext to the ruling party for their aspersions and rigour. The people, but particularly the lower or lowest ranks, were flattered with the hope of temporal benefits from a change of system; and some clerical writers boasted that they could procure a hundred thousand hands to their petitions; that they were in reality the strength of the land; and they declared, even at the moment the Spanish armada threatened the kingdom, "that it were no policy to reject their suit at such a time, when the land was invaded *." The consequence was, that the Episcopal clergy, and even some of the laity, to recommend themselves to court favour, went to the opposite extreme, pretending principles of passive obedience to the prince:—And towards the close of this reign, Bancroft, afterwards primate, en-

* Howel's State Trials, vol. i. p. 1269. Their abuse of the bishops outraged all decency, Strype's Life of Whit. p. 298. *et seq.* We have already shewn that these preachers anticipated for themselves, not only all the church livings held by the hierarchy, &c. but the property which had been taken from the religious houses; and that they meant to thrust the prelates, whom they denominated *rogues* (Life of Whitgift, p. 292.) out of every thing, while they themselves resolved to pay no taxes, as being unlawful.

deavoured to meet the sectaries on their own ground, by asserting the divine institution of bishops*—doctrine till then unheard of, and contrary to those laws which gave supremacy to the crown. But, though the higher classes might, in general, be alarmed, there were many who countenanced the puritans;—some out of devotion, not that they would have supported the projects imputed to that body, but that they either disbelieved or despised them;—others, headed by the Earl of Leicester, out of a desire to subvert the hierarchy, that they might have a fresh plunder of the church, not doubting their ability to govern and defraud the party who assisted them in dissolving bishoprics and deanries †.

* Neal, vol. i. p. 494.

† Life of Hooker, p. 9. The following, taken from a letter by Sir F. Walsingham to a French gentleman, is an account of the principles acted upon towards the puritans.

"For the other party, which have been offensive to the state, though in another degree, which named themselves reformers, and we commonly call puritans, this hath been the proceeding towards them: A great while, when they inveighed against such abuses in the church as pluralities, non-residence and the like, their zeal was not condemned, only their violence was sometime censured. When they refused the use of some ceremonies and rites, as superstitious, they were tolerated with much connivancy and gentleness: Yea, when they called in question the superiority of bishops, and pretended to a democracy into the church, yet their propositions were here considered, and by contrary writings debated and discussed. Yet all this while it was perceived that their course was very dangerous, and very popular: As, because papistry was odious, therefore it was ever in their mouths, that they sought to purge the church from the relics of popery; a thing acceptable to the people, who love ever to run from one extreme to another."

"Because multitude of rogues and poverty was an eye-sore, and a dislike to every man, therefore they put into the people's head, that

Upon the whole, this reign was not favourable to public liberty. Elizabeth was regarded as the bulwark of the protestant cause, not in England only, but throughout Christendom;—and as, though the last of her race, she could never be prevailed with to marry, nor to name a successor, the prospects of Protestants seemed bounded by her own existence, while the Catholics, considering her the great bar to their ascendancy, were ever busied in plots against her life. Those ma-

if discipline were planted, there should be no vagabonds nor beggars; a thing very plausible. And, in like manner, they promised the people many impossible wonders of their discipline. Besides, they opened to the people a way to government, by their consistory and presbytery; a thing, though in consequence no less prejudicial to the liberties of private men than to the sovereignty of princes, yet, in first shew, very popular. Nevertheless, this, except it were in some few that entered into extreme contempt, was borne with, because they pretended in dutiful manner to make propositions, and to leave it to the providence of God, and the authority of the magistrate."

"But now of late years, when there issued from them that affirmed the consent of the magistrate was not to be attended; when, under pretence of a confession, to avoid slander and imputations, they combined themselves by classes and subscriptions; when they descended into that vile and base means of defacing the government of the church by ridiculous pasquils; when they began to make many subjects in doubt to take oaths, which is one of the fundamental parts of justice in this land, and in all places; when they began both to vaunt of their strength, and number of their partizans and followers, and to use comminations, that their cause would prevail through uproar and violence, then it appeared to be no more zeal, no more conscience, but mere faction and division; and, therefore, though the state were compelled to hold somewhat a harder hand to restrain them than before, yet it was with as great moderation as the peace of the state or church would permit." Burnet, vol. iii. p. 755, 756. The moderation ascribed to the government may be doubted: But the paper is invaluable, as throwing light upon the springs of action, and the feelings of the age.

chinations begot a tender solicitude for so precious an existence, ending in a popularity which was not to be shaken by minor blemishes in administration, and daily kept alive amongst the ruling party, on the one hand, by the terror of wild innovation, and the imputed designs of the sects to upset the rights of property; on the other, by the conspiracies of Papists, who, after the northern rebellion, the cruelties towards the reformed on the Continent, who were assisted by the English court in their noble struggle for freedom, the massacre of Paris, the different plots in connection with the Scottish Queen, and the projected Spanish invasion, were regarded with still greater horror, as monsters not only of impiety, but of every immoral and cruel propensity towards their fellow-beings,—as if their creed had not been common to all the ancestors of their condemners, who were consequently involved in the same sentence. This great source of popularity, Elizabeth sedulously cultivated; and no monarch ever seemed better qualified to gain the affections of the multitude. She had, besides, a vast advantage in the general wisdom of her council, who tempered moderation with severity, and knew how far they might safely go in stretches of prerogative. Her policy too, though not always just, was calculated for success. She, like her predecessors, interfered in elections to Parliaments; and she gratified leading men by gifts, some of them, it must be confessed, such as patents and monopolies, of a description no less

inequitable than pernicious to the rest of the community. The middling and lower classes she conciliated by a more rigid dispensation of justice, in questions with the higher, than had previously been practised; and she both weakened such of the aristocracy as she dreaded, and obliged the lower classes, by rendering the smaller tenants more independent *.

From these sources sprung the great influence of Elizabeth, and thence it was that she was permitted, in some cases, to adopt measures not altogether consistent with the liberty of the people, and even on certain occasions to invade the privileges of parliament. Yet the grand principles of the constitution were preserved, however its spirit might occasionally slumber.—The greatest blot of her reign arose from the proceedings of the Court of High Commission;—but even in these, there are circumstances which distinctly prove that the watchful spirit of freedom, in regard to stretches of prerogative, was still alive. The proceedings and powers of this court will fall particularly under consideration in the next chapter; and therefore we shall content ourselves with remarking here, that the queen issued, and the clergy and others accepted of, commissions unauthorized by the statute which allowed the erection of the court: That the commissioners, acting upon such illegal powers, tendered the oath *ex officio* to answer interrogatories, to those who came before them in the

* Scott's Somers' Tracts, vol. i. p. 167.

character of offenders; and that they granted warrants to pursuivants to ransack houses, and fined and imprisoned when they had a right only to inflict ecclesiastical censures. But it illustrates the genius of the age, to state that the executive did not venture to enrol those commissions in Chancery, as ought to have been done, lest their lawfulness should be impugned upon such a publication, which was at least an homage to public opinion *: that not one fine was ever levied during this reign; and that so often as individuals took out prohibitions and appealed to courts of law, they instantly obtained redress by a strict interpretation of the statute which authorized that court. The power to send pursuivants to ransack houses too, was tried in a memorable way:—A pursuivant having, by virtue of a warrant from the commissioners, attempted to enter a house, was killed by the landlord; and the man was brought before the legal tribunal on a charge of murder. When the prerogative was so much concerned in the result, it is easy to conceive what interest would be made to obtain a judgment against him; but the judges, holding that the commissioners had no right to issue the warrant, concluded that he was justified in killing the pursuivant, and dismissed him from the bar. The true cause of so much severity having been prac-

* As this subject is fully discussed in the next chapter, under the head of the Court of High Commission, I forbear from quoting authorities here, as altogether superfluous.

tised, would appear to have been the ready submission of the prisoners, who purposely did not appeal to the law, from a desire to represent themselves as sufferers for conscience sake, in order to gain popular favour, while they recommended themselves to the Queen, by shewing, that though they could not comply with her commands against those of their heavenly master, they would not dispute her power; for, as has been already observed, many of them, while they denounced the English church as antichristian, bastardly, &c. did not decline to hold livings under it, conceiving themselves better entitled to the wages of preaching than "the dumb-dogs," such they denominated the conforming clergy, (for this and other coarse appellations were early familiar,) whom, in the old language of the Papists against the Protestant teachers, they, with some truth, represented as grossly ignorant, as having been shoemakers, tailors, tinkers, millers, &c.; and some of them as having been actually burned in the hand for crimes. Perhaps also not a few, who, in the face of the law, had begun to set a-foot their church government by presbyteries, synods, &c. willingly submitted to the censures of the Court of High Commission, lest, though they might stop proceedings there, they should be brought before another tribunal and undergo a smarter punishment.

During this reign, in spite of much impolicy, partly arising from the erroneous opinions of the

age, society improved, and many circumstances, which shall be developed in their proper place, prepared the public mind for a more rigid attention to constitutional principles under the Stuarts.

## CHAP. II.

*Containing a particular account of the various Institutions and Usages under the Tudors and their Predecessors, which either were prejudicial to freedom, or are supposed to have been so; together with an examination of Mr. Hume's Statements in his third Appendix, upon which he concludes that the English government under Elizabeth, "bore some resemblance to that of Turkey."*

THE various institutions and usages under the Tudors and their predecessors, which were, at a subsequent period, abolished or discontinued, have been so little understood, or so generally misconceived, that, without presenting a particular account of them, and examining the statements of Mr. Hume, which are remarkably plausible, and have made a deep impression on the public mind, we should in vain attempt to convey a correct idea of the views of parties during the stormy period we have selected as the subject of our work; and the discussion of such topics here, will save us from the necessity of interrupting the narrative with explanations.

The Court of Star Chamber, as holding a conspicuous rank amongst arbitrary institutions, demands our earliest attention.

Anterior to the time of the Tudors, there does not occur, either in any publication or record, so much as the mention of any Court called the Court of Star-Chamber: And the advocates for its antiquity are obliged to admit, that the few instances referred to by them, in proof of its antiquity, passed under the Council, as it was then called, or, as we should now denominate it, the Privy Council. Indeed Lambard, the first great writer on this subject, states explicitly, that the Star-Chamber was no ordinary court, but the king's council, which, out of the inherent right and duty of the sovereign to award justice, interposed on great occasions, when the common law either afforded no remedy, or an inadequate one, or when one of the parties was too powerful for the usual course of justice. Some of the other writers upon the subject, as Sir Edward Coke and Hudson, appear to affect an obscurity on this point, as if the court of Star-Chamber were the council, and yet something different from it; but their disingenuousness does not heighten our opinion of the cause they espouse. Cou Star ber.

It is the province of the Privy Council to inquire into grand state offences; but it would appear, that, in turbulent and barbarous times, the same body who detected the guilt, sometimes awarded the punishment; and it might not unfrequently happen, that the accused would prefer to purchase his peace by a pecuniary mulct, to undergoing the hazard of a trial. This, however, in unsettled times, might afford the pretext for

imposing fines or inflicting other punishments; and it was one of the main objects of the Great Charter to secure the national rights from such an invasion.

The great charter provides that no man shall be taken or imprisoned, or deprived of his freehold, outlawed, or tried, except by the judgment of his peers or the law of the land. And Lambard admits, that the subject understood this, as for ever putting a period to the powers of the Council *: but he argues, that "these words ought to be understood of the restitution then made of the ordinary jurisdiction in common controversies, and not for restraint of the absolute authority; serving only in a few rare and singular cases: And, therefore," continues he, "see what followed: some cases daily creeping out of suits, for which no law had been provided, and some misdemeanours also happening from time to time in the distribution of those laws that were already established, it came to pass that many, finding none other helps for the grief, were enforced to sue to the king's person itself for remedy; and he again, knowing himself to be the chief justice and lieutenant of God within his own realm, thought himself bound to deliver judgment and justice, whensoever it should be required at his hands. The which, forasmuch as he could not evenly and with uprightness perform, unless he

* Lambard's Arch. p. 126.

called the adversary party; neither had he, many times, especially in a new and sudden occurrent, any ordinary writ or process whereby to call him, of necessity he was to resort to the kingly and absolute power again, and by his pursuivant or letters, to convent him, and then to proceed to the hearing and determining of the cause as to his princely office did appertain*." He goes on to state, that this was so far from offending the subject for a long time, that an act was passed in the 28th Edward I. c. 6. providing that the Chancellor and Justices of the King's Bench should follow the king wheresoever he went—"that he might have always at hand, men learned and able to advise him in such cases as he admitted to his hearing;" but that, "such are the weakness and imperfection of man, the time was not long, but the subject which so desirously fled to the king and his council for succour, did as hastily retire and run back to the ordinary seat and judge again." He then enumerates many statutes to put an end to the judicial powers of the council†.

This mode of reasoning is undoubtedly not philosophical. The object of the great charter was to protect the people against the power of the prince when he attempted to stretch the prerogative beyond the laws, and to prevent any mode of trial except by one's peers or the law of the land; but, according to Lambard, this object was not

* Lambard, p. 127, *et seq.*

† Id. p. 129, *et seq.*

attained, for in all emergencies, of which the king was the sole judge, the sovereign might, out of his absolute power, determine the matter. What, then, was the security obtained by the great charter? or what absurdity could be equal to that of devising laws to controul the regal power, and yet allowing the king himself to be the sole judge of the law? Whenever he wished to oppress, he would, unquestionably, pronounce the case to be an extraordinary one, which demanded his personal interposition, and from his judgment there could be no appeal. Had this been the state of the law, well might Richard II. say, that the laws were sometimes in his head, sometimes in his mouth. It is utterly impossible that the great men who extorted the charter from the tyrant that so grossly violated the public rights, should have meant any thing so foolish, and this author himself states, that the people understood the charter differently; whence the conclusion is, either that they were outwitted, or, that the royal power was incapable of limits. But Lambard's allusion to the statute 28th Ed. I. betrays an ignorance of the ancient jurisprudence of the country truly astonishing; and yet he has been followed in it by Hudson*, the writer upon the star chamber so much bepraised by Lord Mansfield. Anciently the King's Bench was ambulatory, following the king's person in his progress through the kingdom. Under Edward I. himself, it actually sat at Roxburgh, upon his con-

* Hud. in the Col. Jurid. p. 12.

quest of Scotland. The statute alluded to, therefore, had reference to this practice only; and other writers of the greatest authority have so understood it *.

To a writer of such acuteness as Sir Edward Coke, who expressly lays down, that all pretence of prerogative against magna charta is taken away †, and that the king has committed and distributed all his power of judicature to several courts of justice ‡, the reasoning of Lambard must have appeared extremely futile; and he accordingly assumes a different ground—that the alternative in the great charter, of a trial by one's peers, or the law of the land, was intended to reserve the power of the council or court of Star Chamber, then an existing and legal court of justice, which administered the laws in a manner peculiar to itself; and that none of the after statutes applied to that court which is not once named in them §. This oracle of the law, however, has not, in this instance, exhibited his usual correctness and research: For the alternative referred, as Dr. Henry has judiciously

* Coke's 4th Inst. p. 72. Blackst. Com. vol. iii. p. 41.—By c. 4. of the 28th Edward I. it is provided, that "no common pleas shall be, from henceforth, holden in the Exchequer, contrary to the form of the great charter;" and then c. 5. proceeds thus: "And on the other party, the king wills that the Chancellor, and the Justices of his Bench, shall follow him; so that he may have, at all times, near unto him, some sages of the law, which be able duly to order all such matters as shall come before the court, at all times, when need shall require."

† Coke's 2d Inst. p. 36.

‡ Coke's 4th Inst. p. 70, 71.

§ Coke's 4th Inst. c. 5.

conjectured, to trials by ordeal, compurgators, &c. all then in use *; and is clearly established, by the most solemn statutes, to be utterly inconsistent with Coke's idea. But his incorrectness ceases to surprise us, when we reflect, that he himself sat as a judge in the Star Chamber, where he lent the authority of his character for legal knowledge, to strain the power of that court to the utmost; and that it was natural for him to support the proceedings of the judge in his writings †.

As some trials which affected the life of the party might take place by ordeal, &c. so those which struck at the patrimony, liberty, &c. of the subject, were cognizable only by juries. The incorrectness of Coke is proved—1st, By 3d Edward I. c. 6, which provides, that no city, borough, nor town, nor any man, shall be amerced without reasonable cause, &c. *and that by his or their peers*: 2dly, By magna charta, as confirmed by the same prince in the 25th of his reign, which provides, that no freeman shall be amerced except by the oath of twelve honest and lawful men of the vicinity, or if a peer by his peers; and that no freeman shall be taken and imprisoned, except by a trial of his peers, or by the law of the land. The

* Henry, Vol. vi. p. 80. The idea, however, was not peculiar to Coke or Hudson, but had been announced publicly in the Star Chamber by Lord Keeper Egerton. See Hud. p. 4.

† Sir Edward Coke and Lord Howard, attended with the king's council Sir Francis Bacon and Sir Henry Yelverton, in the case of the Earl of Northumberland and Sir Stephen Proctor, published in open court, that the statute 3d Henry VII. extended not any way to this court. Hud. p. 10. But Coke takes a different view in the Inst.

various enactments to define the admirals, stewards, constables, and marshals powers—which, as we shall afterwards see, were very limited—likewise fully bespeak the rigid attention of our ancestors to national rights.

Those positive enactments of the legislature did not, in semi-barbarous and unsettled times, so completely restrain the power of the council, as to prevent it from occasionally transgressing its boundaries, by arrogating judicial powers; but the instances are rare *, and fresh laws were immediate-

* Sir Edward Coke says, "This court, in ancient times, sat but rarely, for three causes: First, For that enormous and exorbitant causes which this court dealt withal only, in those days rarely fell out.' That is strange, for, if we look even to the statutes, particularly 2d Richard II. c. 6, we shall discover ample proofs of disorders apparently inconsistent with the very being of society. 'Secondly, This court dealt not with such causes as other courts of ordinary justice might condignly punish, *ne dignitas hujus curiæ vilesceret.*' Query, What is condign punishment, but what the law ordains? and were not all offences punishable at common law? 'Thirdly, It very rarely did sit, lest it should draw the king's privy council from matters of state, *pro bono publico*, to hear private causes, and the principal judges from *their ordinary courts of justice.*' 4th Inst. c. v. p. 61. This last is a most extraordinary reason, since statute was passed after statute, to prevent the illegal interference of the council with ordinary justice, and since, in the same chapter, we are told that, in the author's time, it sat on Wednesdays and Fridays regularly, during term time. Men in ancient times must have been differently constituted from what they were in this author's days, or are now, if they neglected to avail themselves of an arbitrary institution. But the repeated complaints of, and statutes against, the council, prove that human nature has undergone no change; though, were my Lord Coke's view correct, there would be this inconceivable anomaly, that the council, while it was above taking advantage of its legal rights, exercised its power in a different way—a way that did not promote its authority, while it provoked animadversions: For it could have done all in the one way that it could desire in the other.

ly devised to arrest such an encroachment upon public rights. The fact is, that the benefit of the laws was enjoyed by a small portion only of the people; that the great aristocracy so overawed and threatened, or suborned judges and juries, as to be above ordinary jurisdiction; that, by every act of violence, &c., they left no alternative to the oppressed but to fly for succour to the throne; and that the king, anxious to advance the prerogative, as well as to preserve the public peace, took advantage of disorders to call the violators of the laws before him in council. This, by affecting the great men themselves, induced them instantly to repress it; and the zeal of the Lower House on that head may probably, with some truth, be partly ascribed to its aristocratic constitution: For, though the great body of the people were sufficiently poor and unprotected, it does not follow that the great gentry, who were returned to Parliament, were not in a very different condition.—In the 5th Edward III. "it was enacted, that no man from thenceforth should be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels, seized into the king's hands, against the form of the great charter and law of the land." In the 15th, a complaint was again made in Parliament against this violation of the great charter; and, in the 25th, the following law was passed: Stat. 5, c. 4. "Whereas it is contained in the great charter of the franchises of England, that none shall

be imprisoned, nor put out of his freehold, nor of his franchises, nor free custom, unless it be by the law of the land, it is accorded, assented, and established, that from henceforth none shall be taken by petition, or suggestion made to our lord the king, or to his council, unless it be by indictment, or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be put out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of law; and if any thing be done against the same, it shall be holden for none." Still the evil continued, and, by the 28th, of the same reign, the great charter was confirmed, and it was particularly provided c. 3. "that no man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of the law." These suggestions had been still continued, and therefore, by 37, c. 18. of the same king, the following provision was made: "Though that it be contained in the great charter, that no man be taken, nor imprisoned, nor put out of his freehold, without process of the law; nevertheless divers people make false suggestions to the king himself, as well for malice as otherwise, whereof the king is often grieved, and divers of the realm put in great danger and loss against the form of the

same charter; wherefore it is ordained, that all they that make such suggestions, shall be sent with the same suggestions before the chancellor, treasurer, and his grand council, and that they there find security to pursue their suggestions, and incur the same pains that the other should have had if he were attainted, in case that his suggestions be found evil; and that then process of the law be made against them without being taken and imprisoned, against the form of the said charter and other statutes." The 38th of the same king, c. 9, so far alters this as to substitute damages to the aggrieved, and a fine to government for the *lex talionis*. But the statute 42d, c. 3. of the same reign, is still more precise: "At the request of the commons by their petitions put forth in this parliament, to eschew the mischiefs and damages done to diverse of his commons by false accusers, which oftentimes have made their accusations more for revenge and singular benefit, than for the profit of the king or of his people, which accused persons, *some have been taken and sometimes caused to come before the king's council by writ, and otherwise, upon grievous pain against the law*: It is assented and accorded, for the good governance of the commons, that no man be put to answer without presentment before the justices, or matter of record, or by due process and writ original, according to the old law of the land; and if any thing henceforth be done to the contrary, it shall be void in law, and holden for error." In spite of these laws, the evil recurred; and, therefore,

in the 1st of Richard II. it was provided, that no suit should be ended before any lords, or others of the council, but before the justices only. In the 2d of that reign, however, upon another petition from the commons in parliament against the council, it was answered from the throne, that the king thought it improper that he should be restrained to send for his lieges upon a reasonable cause, though he did not mean that they should answer finally about their freehold, but should be remanded for trial as the law required; "provided always that, at the suit of the parties, where the king and his council shall be credibly informed, that because of maintenances, oppressions, or other outrages of any persons in the country, the common law cannot have her course; in such case the council may send for the party upon whom the complaint is made, to make his answer for his contempt; and furthermore, by their good discretion to compel him to find sureties by oath, or in other manner for his good behaviour, and that he shall not by himself, or by any other, commit maintenance, or other thing which may disturb the course of the common law*." This affords a melancholy picture of the times; but it clearly evinces that all parties were agreed that the interposition of the council was irregular, and only justified by the principle of necessity; since, had it been an ordinary court of justice, such language could never have been used.

* Lambard, p. 147. *et seq.* See also Cott. Abridg. of the Records; but it is not so fully stated there, vol. i. p. 178.

An evasive answer was, in the 13th, returned by Richard, to a petition of the commons to the same purpose; but in the 16th they carried their point; for it was then enacted that no man should be forced to appear before any Lords of the council. Yet, such were the turbulence and barbarism of the times, that in the 4th of the next reign, the commons were obliged to petition against *all letters of privy seal, &c.* by which the subject was summoned before the council, and they referred to the statutes of Edward III., &c. Henry answered that he would charge his officers to abstain more than formerly from sending for his subjects in this manner; but that it was, nevertheless, not his intention to prevent his officers from sending for his subjects in matters and causes necessary, according to the practice of his predecessors. His son likewise asserted the same power *. But, though such a prac-

* Lambard, p. 149, *et seq.* Cotton's Abrid. of Records, p. 348. There was first printed in Hawkins' edition of the Statutes, what is denominated a statute by Richard II. in the 13th of his reign, and printed as such, in the late edition of the statutes of the realm, published by command of Geo. III. in pursuance of an address of the House of Commons, (vol. ii. p. 74.) whereby maintenance is prohibited "upon pain of imprisonment, fine, and ransom, or of being punished in other manner, according as shall be advised by us and our council." This, however, is no statute, but merely a writ addressed to the sheriff of Kent by the king and his council, and it is said that "like writs are directed to the several sheriffs throughout England." It ought not therefore to have been printed amongst the statutes; and in fact only proves the disorderly state of society, and the existence of the irregularity practised by the council, of which the Commons complained this very year, and which they got redressed in the 16th of that reign, or three years afterwards.

tice was struggled for on great and crying emergencies, it does not follow that the council possessed judicial powers; and these responses shew upon what principle the monarch acted, while it ought not to be forgotten that Richard II. was dethroned for tyranny, and that both Henry IV. and his successor, having been seated on the throne contrary to the usual course of succession, and being exposed on that account, particularly Henry IV. to insurrections for the re-establishment of the lineal descendant of the crown, found it necessary to resort to this course for their own security.

But it is alleged, that the judicial powers of the council are proved by statutes which authorise its interposition in certain cases. Thus, by the 12th Richard II. c. 11, *scandalum magnatum*, which had been complained of, and was, according to statute 3d Edward I. and 2d Richard II. cognizable by the common courts of justice, is made punishable by the council, *notwithstanding those statutes* which are specially referred to. Thus, by 13th Henry IV. c. 7, it was ordained, that, in the event of any riot, assembly, or rout of the people against the law, the justices of the peace, three or two of them at the least, and the sheriff, or under-sheriff of the county where it occurred, should arrest the offenders, and have power to record what they found done in their presence against the law; which record should be the ground of conviction, in the same manner and form as is contained in the statute of forcible entries; but that, in the event of the offenders having departed before the arrival of the

sheriffs and justices, these magistrates should diligently inquire within a month after the riot, &c. and should hear and determine according to the law of the land; "and if the truth could not be found in the manner as is aforesaid, then, within a month next following, the justices, three or two of them, and the sheriff or under sheriff should certify before the king and his council all the deed and circumstance thereof, which certificate should be of like force as the presentment of twelve: upon which certificate the said trespassers or offenders should be put to answer; and they which should be found guilty, should be punished according to the discretion of the king and his council: *and if such trespassers or offenders did traverse the matter so certified, the same certificate and traverse should be sent into the king's bench, there to be tried and determined as the law required.*" The 31. Henry VI. c. 2. which is particularly referred to by Sir Edward Coke, sets forth, that the king, "upon certain suggestions and complaints made, as well to him as to the lords of his council, upon divers persons, of great riots, extortions, oppressions, and grievous offences against the peace and laws, had given command as well by writs under his great seal, as by his letters of privy seal to appear before him in his chancery, or before him and his council, at certain days, in the same writs and letters contained, to answer to the premises; which commandments were, and many times had been, disobeyed in contempt of the king, and hinderance, damage, &c. of his said complainants:" power is therefore given

to the chancellor to issue proclamations against those who refuse to appear before the council, and certain punishments are ordained, "*provided that no matter determinable by the law of this realm, shall be, by the same act determined in other form, than after the course of the same law in the king's courts having determination of the same law.*" But the statute is limited to seven years' endurance. The reader may perhaps hesitate in admitting the assumption, upon these statutes, by the advocates for the antiquity of the Court of Star-Chamber. As to the first, the very circumstance of its being particularly mentioned that the power of punishing *scandalum magnatum* was given to the council, notwithstanding the previous statutes on the subject, implies that this was an unusual course; and what is quite decisive is, that by the 17th of the same king, c. 6. the power of punishing this offence is committed to the chancellor. Now, upon the same principle that an inference is drawn from the one, in favour of the ordinary judicial authority of the council, a similar deduction must be made from the other, for the ordinary criminal jurisdiction of the court of chancery: But, surely, no one will be hardy enough to contend for that. With regard to the statute 13th Henry IV. c. 7, the very fact of the accused having it in his power to traverse and carry the case before the King's Bench, "there to be tried and determined as the law required," fully imports, that the jurisdiction thus given to the council—a jurisdiction which it was left to the option of the accused to decline, was

inconsistent with the usual dispensation of justice; while it affords additional evidence against the view taken by Lambard, about the paramount right of the crown to interpose its inherent judicial authority when the occasion seemed to demand it. The same conclusion arises from the temporary and guarded nature of the act 31st Henry VI. c. 2. It is indeed stated in the preamble, that men had been guilty of contempt in disregarding writs for their attendance in chancery, or in the council; but it is evident, from the scrupulous limitations of the statute, that, however parliament might blame resistance of usurped authority for the past, they were resolved to secure themselves against it for the future; and were any inference deducible from the preamble in favour of the ordinary jurisdiction of the council, the same conclusion could not be denied for the ordinary criminal jurisdiction of the chancellor, before whom, it is said, the accused had been also summoned, and whose name, indeed, is first mentioned.—In considering an act of this kind, we must always attend to the peculiar situation of public affairs at its date. The kingdom was then rent with faction; and the laws had, under an imbecile monarch, an ambitious consort, and wicked favourites, lost their vigour; Jack Cade's rebellion had just been suppressed; and Richard, Duke of York, had already appeared in arms; and, though he had as yet submitted, it was only to muster greater strength to support his pretensions. Under such circumstances, the legislature might not feel averse to arm

the executive with unusual power, and to confirm its authority by a general censure of the contempt with which some of its proceedings had been treated; while, it is not unlikely that parliament itself, convulsed with the party spirit and sinister views that generally precede a civil war, proposed the advancement of their own objects in a law that gave power to such as should be placed at the helm of affairs during the approaching contest.

The reasoning of Sir Edward Coke, upon the statutes formerly quoted against the council, is notable, that "neither they nor any other taketh away the jurisdiction of any settled court of justice, neither is the Court of Star Chamber named in any of them, and yet was it a court then and before that time*." This seems to import, that the venerable author conceived that the council was something different from the Court of Star Chamber, and yet there is not the most distant allusion to such a court in any statute whatever, anterior to the time of the Tudors; and he himself refers to the statutes just quoted, in proof of its existence, while the council only is named in them. In citing his cases, too, he mentions that the record bears, that they were either *coram rege et concilio*, or *coram rege et concilio in camera stellata;* nay, in regard to the Chamber, he states, that originally the word camera only was used, and that the true designation of the Star Chamber is *coram rege et concilio*, as that of the King's Bench is *coram rege*,

* 4 Inst. p. 63.

and of Chancery, *coram domino rege in Cancellaria* *.—The Star Chamber was not only the usual place of meeting for the Council in its deliberations upon public affairs, but for the Lords when summoned to advise the king on any extraordinary emergency, and for Committees of Parliament †. Had there been any court of law held in that chamber, the stile, to correspond with that of the others, would have been *coram rege in camera stellata*, instead of *coram rege et concilio*: as obscurity was studied when it did become a court, in order to draw a veil over its usurpations, a proper title was never given.

The author, whose cases in support of the antiquity of the Court of Star Chamber, are most numerous, and are entitled to the greatest respect, is Sir Edward Coke; but though his list, from its size, as well as from the weight of his legal character, appears formidable at a distance, its importance vanishes on a nearer inspection, and we may remark that, on this point, his work is destitute alike of the liberal spirit and the correct good sense which distinguish it in other respects: but the inconsistency arose from his having sat in that arbitrary court as a judge. That cases did occur before the council is demonstrable from the various statutes which were, from time to time, devised to put a stop to such an encroachment upon the privileges of the people; but it would be strange

* See 4 Inst. c. 5.

† Lambard, p. 175. Prynne's Animadver. upon the fourth Inst. The Epilog.

indeed to argue from thence, in the face of repeated acts of the legislature, which stigmatize such proceedings as an infringement upon public rights, —that the Council was a legal tribunal;—while it is evident from the two last statutes quoted above, that a certain species of jurisdiction on particular occasions, was given, by the first of the two, to the Council, and likewise a temporary and limited power by the last. Its interposition on particular occasions, therefore, under these acts, was lawful; and the wonder, consequently is, that there should have been any difficulty in discovering instances of its usurped, limited, or temporary power, while it must create astonishment to learn, that out of fifteen cases quoted by the oracle of English law*, nine are misrepresented, or quite inapplicable to the question. Of the two first cases quoted by him, Prynne could not discover a trace in the records referred to†. The third, he, Prynne, found had been decided in Chancery ‡—the proper court for the cognizance of the question. The fourth was a case in Parliament, which, at that time, frequently took cognizance of private causes §. The fifth appears also to have been agitated before Parliament. The eighth, which the venerable author quotes as the most irrefragable—announcing that Lord Dier had reported it under his own hand in

* See 4th Inst. c. 5. † Prynne's Animad. Epil. p. 417.

‡ Id. p. 418.

§ Id. p. 417. He refers to Ryley's Plac. Par. to prove that private causes were often submitted to Parliament; and the same is obvious from the Stat. 46 Edw. III. to exclude lawyers on that account.

the first of Elizabeth, when he thought it necessary to vindicate by authority the legality of the court, Prynne proves, by the production of the record, not to have had the most distant relation to the Star Chamber, and to be in all respects misrepresented*. The *ninth* appears from Lambard to be also not in point. It regards the Duke of York, in the 35 Henry VI. who, according to Lambard, had been cited upon the statute 31 Henry VI. about riots; but the writ was annulled, because, though it was issued on that statute, it contained nothing about riots†. The eleventh case was decided in Parliament‡. The twelfth, as it is reported to have occurred on the 21st November, in the 32d of Henry VI. might, and if it really were a case of jurisdiction, in all probability, must, have taken place under the temporary statute which was quoted above, about riots, &c., which had only been passed in the preceding year. But there is reason to believe that the case has been altogether mistaken. Lord Coke gives it in these words: "An order *in* the Star "Chamber for the Duke of York's counsel to have "access to him, because called *into* the Chamber "by privy seal." Now, it will be recollected that the Duke of York had already been in arms, but that having submitted for a season, he had retired to his country seat, where he continued till the birth of Prince Edward, which seemed to blast the Duke's hopes of quietly succeeding

* Prynne's Animad. on 4th Inst. p. 419.
† See Lambard, p. 180.
‡ Prynne, p. 419.

to the throne, taught him the necessity of exertion, and the immediate illness of Henry, with the general odium of the government, which vented itself in slandering the Queen with her favourite Somerset, by pointing out this as the proper time, at once roused the Duke and his adherents into activity; and that he was instantly admitted into the council, where, having become supreme, he was soon made protector of the realm, while Somerset was, on various charges, sent to the Tower *. The Prince was born on the 13th of October; and there is extant a commission under the great seal, dated the 14th of February following, by which the Duke was empowered to hold a parliament †. The order in the Star Chamber, however, is dated on the 21st November ‡, and it is utterly inconceivable upon what ground the individual who was in February supreme, was called *before* the Star Chamber, Sir Edward says *into* ||, which points at the truth, as a criminal at so late a period. Even, after he had been in arms, the Privy Council, instead of venturing to examine him relative to his rebellion, had advised the king to summon a great council of the Peers to hear his and Somerset's mutual accusations §. We are

* Hume, vol. iii. p. 197. *et seq.* Henry, vol. ix. p. 144. *et seq.*

† All authorities agree as to the date of Prince Edward's birth; and the commission to the Duke of York is extant in Rym. Fœd. vol. xi. p. 344.

‡ Lambard, p. 179. distinctly states this, though Coke does not give the month.

|| Lambard says, *before* the Council, p. 179.

§ Halle, f. 31. Holin. p. 639. Henry, vol. ix. p. 145.

told by historians, that he lived in retirement from that time, till he forced himself into the council, and, if he had been molested, some account of this event, at such a crisis, must have been handed down to us: but, if he had been cited as a criminal on the last occasion, why should he have needed to apply for liberty to his counsel to have access to him? He could not be in confinement on any charge cognizable by the Council, unless he were attached of high treason, and merely examined by it; and were that the case, it would afford no colour for presuming that it arrogated judicial powers, since such an examination would fall within its province at this day. The fact would appear to be, that the Duke had been called into the Council as a member, and as the leading one too; but that, being a very prudent, moderate, and cautious man, he chose either to be, or to have the appearance of being, directed by legal advice in his present very critical situation—particularly in regard to the impeachment of Somerset—well knowing that, on any reverse of fortune, every circumstance would be taken advantage of as a pretext for his destruction.

Thus are swept off at once, nine out of Lord Coke's fifteen cases; and we may observe that some of these had been cited by Lambard, while Hudson, who talks of the records with peculiar confidence *, though from his mistakes,

* He says it is "a doating which no man who had looked upon the records would have lighted upon"—to impute the origin of the Court to the statute 3 Henry VII.—Why? "it being solemnly ad-

and his not referring to any rolls, it may be doubted whether he had ever consulted them, quotes the same cases with all the errors of the other authors*. The same writer tells us, that Henry VII. anterior to the stat. 3. of his reign, which, as we shall see, afforded a pretext for the institution, frequently presided in person in the Star Chamber; but this does not tend to advance our opinion of its being a legal court, since it has been held by the earliest writers, that the king has committed and distributed his whole power of judicature to several courts of justice †; and we are quickly relieved of any difficulty that might arise from Hudson's statement, by being apprized of the nature of the questions which were agitated before that monarch,—"as of the intercourse of Burgundy,

judged by the Chief Judges of England, Sir E. Coke, and the Lord Howard, in the cause betwixt the Earl of Northumberland and Sir Stephen Proctor, and published in open court, that the statute 3 Henry VII. extended not any way to this Court."—This is logic; but Sir E. Coke was not himself convinced by it; for he tells us that the statute confirmed the jurisdiction of the Court.—4 Inst. c. 5. The judgment founded on by Hudson, did not even satisfy the king's council; for there is in Rymer a Note of all causes cognizable by the Star Chamber, as drawn up in the 1st of Charles I. by authority, in which its jurisdiction appears to be ascribed to the statute. Rym. Fœd. v. 18. p. 192.

* See Hud. p. 12. *et seq.* for a proof of his having just quoted the cases referred to by others, &c.

† 4 Inst. p. 70. The author proves this from Bracton and Britton, and yet Hudson as well as Lambard, quotes these authors to shew that the king had reserved the dispensation of justice to himself, not marking the difference between the theory of the sovereign being the fountain of justice, and the way in which his judicial powers are exercised.

the marriage of Prince Arthur, and the like *," —all matter fit only for the cognizance of the Privy Council and not of any court of law; and yet this author, with the same perversity, elsewhere, again quotes these and similar cases, in proof of the jurisdiction of such a court †. It is indeed said, in general terms, that many cases about the titles of land were likewise determined there; but no instances are given, and even the advocates for the court admit that such questions could not legally be decided before that tribunal. It is not improbable however, that cases regarding the titles of land were frequently discussed before that monarch, though the fact will not warrant any inference in regard to the Court of Star Chamber. His followers, who had been previously ejected from their possessions, reclaimed them, and forfeitures against the opposite faction were now numerous in turn. It is scarcely to be doubted, therefore, that the council would be filled with petitioners, whether sufferers under the new dynasty, or claimants of old rights and suitors for new grants. But Henry had too much good sense to affect the exercise of the judicial powers in his own person: and, even with regard to this arbitrary court, though Hudson tells us, that when the sovereign was present, the Council merely delivered their opinions, reserving the right of judgment to their master,— there is no instance of such a thing, except that of James I. whose pedantic pretensions led him

* Hud. p. 16.

† Hud. p. 52. See also Harl. Man. Brit. Mus. No. 736.

to such an absurd proceeding in the case of the Countess of Exeter against Sir Thomas Lake *.

We shall conclude this branch of the subject, with remarking, that nothing more effectually shews the badness of the cause than the extraordinary keenness of its advocates, and the lameness and absurdity of the evidence adduced by them; and that, had such a court existed, Sir John Fortescue, in his excellent works, could not have failed to allude to it, especially as he particularly mentions the conviction by attaint, of corrupt jurors, for whose correction the court was afterwards alleged to be most necessary. As an excuse for the paucity of their cases, on this subject, writers state, that the court sat very rarely. Were this correct, a higher compliment could not be paid to the moderation of the different monarchs; but the statutes prove that they illegally used the council; and it is inexplicable upon such an assumption, how they should have obstinately employed it in one shape, when they could have lawfully accomplished their object in another, which they yet neglected.

We shall now consider the statute 3 Henry VII. c. 1. It proceeds upon the preamble, that "the

* Hudson, p. 8 and 9. This author says, that his "most excellent majesty, with more than Solomon's wisdom, heard the cause for five days, and pronounced a sentence more accurately eloquent, judiciously grave, and honourably just, to the satisfaction of all hearers, and of all the lovers of justice, than all the records extant in this kingdom can declare to have been, at any former time, done by any of his royal progenitors." P. 9.

king, &c. remembereth how, by unlawful maintenances, giving of liveries, signs and tokens, and retainders by indentures, promises, oaths, writings, or otherwise embraceries of his subjects, untrue demeanings of sheriffs in making of panels, and other untrue returns, by taking of money by juries, by great riots and unlawful assemblies, the policy and good rule of this realm is almost subdued, &c." It is therefore "ordained, that the chancellor, and treasurer, and the keeper of the privy seal, or two of them, calling to them a bishop and a temporal lord of the privy council, and the Chief Justices of the King's Bench and Common Pleas, or other two Justices in their absence, &c. should have authority to call before them by writ or by privy seal, the said misdoers, and them and others by their discretion, to whom the truth may be known, to examine, and such as they find therein defective to punish them after their demerits, *after the form and effect of statutes thereof made, in like manner and form as they should and ought to be punished if they were thereof convict after due order of law.*" No unprejudiced mind can attend to this statute without being satisfied that it erected a new court. It does not allude to any previous one; it does not embrace the council; and yet it is alleged by Sir Edward Coke, that it was declaratory of proceedings in the ancient court, that is, the council, and confirmed its jurisdiction. All the offences enumerated were punishable by previous statutes; and the ordinary course of justice only, was now departed from. If the council had previously possessed such powers, there would have been no oc-

casion for the act; and, at all events, the ancient court must have been alluded to as an existing tribunal. Instead, however, of that, the privy council is mentioned without an insinuation of such an inherent power. But the inconsistencies committed on this subject are extraordinary: Sir Edward Coke, with two other judges, had decided that this statute did not refer to the Star Chamber at all, which was independent of it, any more than it did to the other ordinary courts, yet he takes a different view in his writings*, while Hudson, who thought a judgment irrefragable evidence on the subject, follows the decision as indisputable, and censures Lord Bacon, because, in common with other authorities, he ascribed the institution partly to the statute †. However posterity might mistake this act of Parliament, the framers of it could not; and a judgment was pronounced on it, only five years after its date, in consequence of an attempt in that court, which was defeated, to augment the number of the judges ‡. But, says Lord Coke, "the sudden opinion in 8 Henry VII. and of others" (he quotes the great lawyer Plowden's Com. in the margin,) "not observing the distinction between acts declaratory of proceedings in an ancient court, and acts introductory of a new law in raising of a new court, is both contrary to law and continual experience §." Surely this venerable judge had here forgotten his own maxim: *Contemporanea expositio est fortissima in lege.*

* Hud. p. 10. 4 Inst. c. 5.
† Id. p. 50.
‡ Plowd. Com. p. 393.
§ 4 In. c. 5.

The court, thus erected by the statute 3 Henry VII., soon fell into desuetude, a proof of its not having been consentaneous to the jurisprudence of England, or the feelings of the people; but Cardinal Wolsey, during his Chancellorship, took advantage of the pretext afforded by the statute, to raise what was thought by some to be an entirely new institution, and which bore little resemblance to that described by the act of Parliament. Sir Thomas Smith, who enjoyed the office of Secretary of State both under Edward VI. and Elizabeth, informs us, that the court "took augmentation and authority at the time that Cardinal Wolsey was Chancellor of England, who, of some was thought to have first devised that court, because that he, after some intermission by negligence of time, augmented the authority of it." "The measure," continues he, "was marvellous necessary to repress the insolence of the noblemen and gentlemen of the north parts of England, who, being far from the king, and the seat of justice, made almost, as it were, an ordinary war amongst themselves, and made their force their law, banding themselves with their tenants and servants, to do or revenge injury, one against another as they listed*." The success

* Smith's Commonwealth of England, b. iii. c. 3. It is said, by some writers, that Henry VIII. began with the use of the court of Star Chamber; and that it was there Empson was first blasted: but this seems a mistake: Petitions were presented to the council from all quarters against him and Dudley—and the council having examined the charges against them, which it would do at this day, committed them for trial. Howel's State Trials, vol. i.

of the institution, in this instance, brought it into repute; for, as the power and influence of the aristocracy set them, in a great measure, above ordinary jurisdiction, a court, which seemed calculated to repress their insolence and violence, came peculiarly recommended to the lower ranks of society. But, though it be the interest of monarchs, in the general case, to limit the power of the aristocracy, yet where the influence of that body is great, and their residence near court common, every arbitrary institution becomes an engine in their hands against the rest of the people; and the Star Chamber which, at the outset, promised benefit to the lower classes, was, at no distant period, justly complained of as tyrannical.

One of the main arguments for the antiquity of the court of Star-Chamber is, that there must have existed somewhere a power to punish corrupt juries; and that one jury would seldom attaint another: For a long time, however, it seldom ventured to punish juries, though it affected the right. Sir Thomas Smith tells us, that though juries were many times commanded to appear before that court, the matter was commonly passed over with a rebuke; and he specifies only two cases where juries had been fined. "But," says he, "those doings were *even then* of many accounted very violent, tyrannical, and contrary to the liberty and custom of the realme of England*." The law had provided a

* Commonwealth of England, b. iii. c. i. Sir Thomas says that this happened in a previous reign; and we may presume, that, as he wrote in Elizabeth's time, it was Queen Mary's, and that one of the cases related to the jury who acquitted Sir N. Throckmorton.

remedy against corrupt juries in the attaint, for which various statutes * were devised: it follows therefore, that, since no mention is made of a power to punish in the council, and as Sir John Fortescue, while he speaks of the attaint †, never gives a hint of any power to try, or punish, a jury except in that way, the council was either not deemed requisite for that object or did not attempt to interfere. The interposition of the Star Chamber, too, was soon productive of baneful consequences ‡.

When this pernicious court was first established by Wolsey, it proceeded with great caution. *The president of the king's council* was added by stat. 21 Henry VIII. c. 20. to the number of the judges —a clear proof that, even at this late period, it was conceived to be quite distinct from the council—and by certain acts of Parliament, both in that reign, and even in Elizabeth's, some particular kinds of cases were committed to its jurisdiction. But it, in no long time, assumed a bolder tone, till it even disowned its origin. The whole privy council arrogated the right of sitting there in judgment, and the question was no longer what the statutes allowed, but what the council in former times had done? Having once adopted the principle of precedent, it no longer submitted to any check upon its proceedings. Every act of the council in the worst times was raked up, though so many statutes were devised against such pro-

* See stat.

† De Laud. Leg. Ang. ch. 26.

‡ Harrison, p. 155.

ceedings; cases were grossly misrepresented; strained analogies were resorted to; and where no shadow of a precedent could be discovered, ingenuity could invent—a proceeding the more simple, as no regular record was kept *; while every abominable recent case was held to be conclusive in all future ones. Where no precedent could be discovered or invented, then the paramount, uncontrollable power of a court, in which the monarch might preside in person as sole judge, (for having held it to be the same as the council, they next assumed that principle,) was entitled to provide a remedy for any alleged disorder. The judges of this court too, neglected no means for advancing so arbitrary an institution. Under the pretext of desiring to be directed by the best legal advice, they usurped the power of nominating the counsel who should plead before them †; a practice that operated to the exclusion of every man who had honesty and

* Hudson tells us that in later times the records were quite neglected, "for that some great men have delivered their opinions that it was no matter whether any pleading remained or not after the cause heard, because the judgment cannot be reversed by error: and causes have, upon deliberation, been ordered to proceed to hearing upon copies, the originals being withdrawn by neglect, and no care taken to have them engrossed *de novo*, and orderly filed; so also the very sentence by which severe punishments have been executed upon offenders, have by mere neglect been wholly left unentered, so that there is no record to justify the inflicting of that punishment," p. 6. He pretends that, in former times, they were regularly kept, but it is evident that he had not inspected any thing of the kind. Harl. MS. Brit. Mus. No. 736, No. 5. gives the same account of the records.

† Hudson, p. 26.

independence enough to assert the rights of his client. The great Plowden fell under their severe animadversion for reminding them of the stat. 3 Henry VII. and Serjeant Richardson, about thirty years afterwards, incurred a censure for a demurrer to the same effect *. The consequences may, therefore, be easily figured: every precedent begot a worse; and, towards the close of Elizabeth's reign, though the Star-Chamber still retained some decency, it had reached a monstrous height; but, under the Stuarts, it threatened a general overthrow of popular rights, and the engrossment of all ordinary jurisdiction. While too, the people groaned under such an evil, there were not wanting writers who were ready to vindicate its worst measures, and absolutely triumph at every instance of usurped power, as reflecting a proper reproof upon the factious for complaining against so necessary and eminent a court. Hudson says of it, " in fame it matcheth with the highest that ever was in the world; in justice, it is, and hath been, ever free from suspicion of injury and corruption; in the execution of justice, it is the true servant of the commonwealth; and

* Hudson, p. 51. Harl. MS. 1200. In the Hargr. MS. in the Brit. Mus. there is, in No. 216, at p. 195. a treatise about the Star-Chamber; but, though the writer strains to make it appear that it was an ancient court, he cites cases fit for the cognizance of the privy council, not of a court of law: and he candidly states that a question occurred in Elizabeth's reign, while Sir N. Bacon was keeper of the great seal, about jurisdiction, between the Star-Chamber and the Queen's Bench, in a case of perjury, &c. and that, after much learned discussion, the judges could not carry back the court farther than 3 Henry VII.

whatever it takes in hand to reform, it bringeth to perfection *." Even Sir Edward Coke himself was so enamoured of this court, probably from a pleasing recollection of the consequence he had enjoyed there, that he pronounces it "the most honourable court in the Christian world, the Parliament excepted, both in respect of the judges and of their honourable proceeding, according to their just jurisdiction and the ancient and just orders of the court." He then describes the judges in high terms, and concludes, "This court, the right institution and ancient orders thereof being observed, doth keep all England in quiet †."

* Hudson, p. 22. This author hopes that the point about the antiquity of the court is so settled, "that it never will be a question in future times," p. 51.

† 4 Inst. p. 65. Mr. Tait, in his Treatise of the Star-Chamber, though he, nearly in the words of Lambard, speaks of an inherent power in the king to call before him offenders who cannot be punished by the ordinary courts, ascribes the ordinary jurisdiction of the Star-Chamber to 3 Henry VII. and says that it was generally understood that Magna Charta secured the people from the council. See a Collection of Discourses of Antiquity, by Hearne, vol. ii. p. 279—300. Camden also tells us, that though this court was very ancient, its authority was so confirmed by the 3 Henry VII. that some ascribed its origin to it. Britan. vol. i. p. 84. See also generally upon this subject, Compton's Jurisdict. of Courts, art. Star-Chamber.—Rushworth has also given an account of the court of Star-Chamber, "being the abstract of a treatise written by a person well acquainted with proceedings of the same;" in which, after mentioning that Sir Thomas Smith and Lambard are the first writers upon the subject, he says—'And the reason, probably, why the learned of the laws did, in their reports, forbear to make mention thereof, was, because it entrenched in those days, as of late time, too much upon the common law of England; and the abuse in the exercise of the jurisdiction of the court, might induce the sages of the law to pass it over in silence, as a usurpation of monarchy upon the common law of England, in the prejudice of the liberty of the subject

Mr. Hume gives an account of this court in the following words: "One of the most ancient and most established instruments of power was the Court of Star-Chamber, which possessed an unlimited discretionary authority of fining, imprisoning, and inflicting corporal punishment, and whose jurisdiction extended to all sorts of offences, contempts, and disorders, that lay not within the reach of the common law. The members of this court consisted of the privy council and the judges, men who, all of them, enjoyed their offices during pleasure: And when the prince himself was present, he was sole judge, and all the others interposed only with their advice. There needed but this one court in any government to put an end to all regular, legal, and exact plans of liberty. For who durst set himself in opposition to the crown and ministry, or aspire to the character of being a patron of freedom, while exposed to so arbitrary a jurisdiction? I much question whether any of the absolute monarchies in Europe contain at present so illegal and despotic a tribunal*."—The erroneousness of this view, in regard to the antiquity and power of the court, must be sufficiently clear from what we have already said upon the subject: But we may remark, in respect to its

granted by the great charter." Whoever receives this as a reason for the silence of writers upon that subject, and contrasts it with the quotations from Coke and Lambard, in the text, as well with Bacon's eulogy upon it, (Hist. p. 594.) must admit, that the English lawyers of ancient times had been cast in a different mould from those who flourished at a later period. Rushworth's Col. vol. ii. p. 471. See also on the Star-Chamber, Harl. MS. Brit. Mus. No. 305. No. 2.

* Vol. v. p. 453, 454.

constitution, first, that it is not correct to say that the judges of the land, who were entitled to sit there, held their offices during pleasure; as it was reserved for Charles I., in whose vindication the learned historian so eagerly makes the statements, to alter the patents of the judges from *quamdiu se bene gesserint*, during good behaviour, to *durante bene placito*, during pleasure:—We shall have occasion to give instances of integrity in Elizabeth's judges in opposition to the Court, which cast a deeper stain upon the reign of Charles I. 2dly, That there never occurred an instance of any king arrogating a right to exercise the judicial function in this court, till James I., with the pedantic pretensions peculiar to him, embraced an opportunity to exhibit there his Solomon like * powers; and even he never attempted it a second time. In the next place, it is extraordinary indeed, to find this learned author assuming it as an introvertible point, that such a court necessarily put an end to all regular, legal, and exact plans of liberty, when, within a few years of the period he is now treating of, the plans of liberty adopted by parliament proved fatal to the prince. The true answer to his question—"Who durst set himself in opposition to the crown and ministry, or aspire to the charac-

* Solomon was the designation which the courtiers of that monarch bestowed upon him. Williams, in the funeral oration for James, makes a long parallel between the king of Israel and the English king.—James is said also to have attempted to preside in the King's Bench; but he was informed by his judges, that he could not deliver an opinion. Blackst. vol. iii. p. 41, Note.

ter of being a patron of freedom, while exposed to so arbitrary a jurisdiction?" is—Elliot, Hampden, and the rest who did it. When this part of Mr. Hume's work is compared with that where he represents Charles I. as in so miserable a plight, from the encroachments of parliament on his prerogative, one would be apt to conclude, that the powers of the court of Star-Chamber had either ceased, or been abridged, whereas they were vastly extended, and the court had entirely lost the very decency and appearance of justice which had characterised it under the Tudors. "The slavish speech of whispering," says even Hudson, "was not heard to come from the noble spirit of those times, in that honourable presence, and not familiarly introduced there, till a great man of the common law, and otherwise a worthy justice, forgot his place of session, and brought it in this place too much in use *."—"The slavish punishment of whipping," says another writer, "was not heard to come from the noble spirits in those times sitting in that honourable presence." (This is not exactly correct, but nearly so.)—"When once this court began to swell big, and was delighted with blood, which sprung out of the ears and shoulders of the punished, and nothing would satisfy the revenge of some clergymen, but cropt ears, slit noses, branded faces, whipt backs, gag'd mouths, and withal to be thrown into dungeons, and some to be banished, not only from their na-

* Hudson, p. 36.

tive country to remote islands, but by order of that court to be separated from wife and children, who were by their order not permitted to come near the prisons where their husbands lay in misery; then began the English nation to lay to heart the slavish condition they were like to come to, if this court continued its greatness *."

But it is not easy to conceive what Mr. Hume meant, by questioning whether any of the absolute European monarchies, in his time, contained so despotic a tribunal. Had he never heard of the Inquisition? Was he a stranger to the existence of the Bastile, and to the very issuing of *lettres de cachet* †, to immure within its dungeons, without a hope either of trial or reprieve, all who were obnoxious, not only to the executive, but even to the mistresses and minions of the court? Nay, had he never heard that those *lettres de cachet* were notoriously sold by the minions or mistresses of the court, in order that the purchasers might gratify revenge, or accomplish some sinister object by oppression?—The very best French institution was worse than the court of Star Chamber; for, the general excellency of the English institutions operated as a check upon this, where all proceedings were public, while in France the judgment-seats were sold, and every

* Rushworth, vol. ii. p. 175. The account of the court of Star Chamber is extracted by him from a manuscript.

† "I have been assured," says Blackstone, "upon good authority, that, during the mild administration of Cardinal Fleury, above 54,000 *lettres de cachet* were issued, upon the single ground of the famous bull *unigenitus*. Com. vol. i. p. 135, Note.

tribunal held out, by its example, an encouragement to an arbitrary course in all the rest.

Court of High Commission.

The next subject that demands attention is the Court of High Commission, which was founded upon a clause of the act that restored the supremacy to the crown, in the 1st. of Elizabeth. The words are these: "The queen and her successors shall have power, by their letters patents under the great seal, to assign, name, and authorise, when and as often as they shall think meet and convenient, and for as long time as they shall please, persons, being natural born subjects, to exercise, use, occupy, and execute, under her and them, all manner of jurisdiction, privileges, and preeminences, in any wise touching or concerning any spiritual or ecclesiastical jurisdiction, within the realms of England and Ireland, and to visit, reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, contempts, offences, and enormities whatsoever, *which, by any manner spiritual, or ecclesiastical power, authority or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended:* Provided that they have no power to determine any thing to be heresy, but what has been adjudged to be so by the authority of the canonical scripture, or by the first four general councils, or any of them; or by any other general council, wherein the same was declared heresy by the express and plain words of canonical scripture; or such as shall hereafter be declared to be heresy by the high court of Parliament, with the assent of the clergy

in convocation." This statute confers no power whatever to fine, imprison, or inflict corporal punishment; and when the court transgressed its limits, the remedy was always in the power of the injured, by applying to the ordinary courts for a prohibition. The real object was to correct the heresies of the clergy, by suspension and deprivation; and surely, if there be a national establishment, all, that enjoy functions under it, ought to conform to its rules. Were it otherwise, the office might be converted to a very different purpose; and here it may be remarked, that the numerous suspensions and deprivations in this reign, (their number, by the way, may be fairly doubted,) afford no ground for charging the government with tyranny, since the doctrine and conduct of the ecclesiastics were irreconcilable to the establishment under which they accepted of livings. At this day the same consequences would follow.—Various commissions were issued by this princess; and, in 1584, she granted one to forty-four individuals, by which she empowers them to inquire into all misdemeanors, not only by the oath of twelve men, and by witnesses, *but by all other means and ways they can devise.* Mr. Hume, following Mr. Neal, says, that this included the rack, torture, inquisition, imprisonment: But, besides that the rack never was attempted, the other clauses distinctly shew that it never was contemplated. The very next clause distinctly appoints them to punish all who obstinately absent themselves from church, &c. by censure, or any other *lawful* ways and means, and to

levy the penalties according to the forms prescribed by the act of uniformity. The third clause authorises them to visit and reform heresies, &c. which may *lawfully be reformed or restrained by censures ecclesiastical, deprivation, or otherwise, according to the power and authority limited and appointed by the laws, ordinances, and statutes of the realm.* The fifth clause empowers them to punish "incest, adulteries, and all grievous offences punishable by the ecclesiastical laws, according to the tenour of the laws in that behalf, and according to your wisdom, consciences, and discretions; commanding you, or any three of you, to devise all such *lawful* ways and means for the searching out the premises, as by you shall be thought necessary*." Having cleared up this point, we may observe, that the commision was extremely arbitrary in authorising the oath *ex officio*, by which the accused was bound to answer interrogatories against himself, and in empowering the commissioners to fine and imprison. Of its illegality the queen and commissioners were so fully aware, that, as we learn from Sir Edward Coke, the commission was not, as it ought to have been, enrolled in Chancery, lest it should have been questioned†. Besides, though fines were *imposed*, not one was *levied* in Elizabeth's time, by any judicial process out of the exchequer; "nor any subject, in his body, lands, or goods, charged therewith ‡."

* Neal's Hist. of the Puritans, vol. i. p. 409.

† 4th Inst. p. 326, 332.

‡ 4th Inst. p. 331

Many arbitrary acts were committed by the commissioners; but, though Mr. Neal is pleased in one place to say, that the privilege of prohibition from Westminster Hall was seldom allowed by the commissioners *, there does not appear, even from his own writings, to have been an instance of the prohibition having been refused †. Indeed, when it came to that, the ordinary courts were bound to support their own jurisdiction, and the judges, in that reign, afforded many proofs of their readiness to assert the laws. The great cause of so many submitting to injustice and oppression from this court, seems to have been their unwillingness to forfeit all hope of ecclesiastical preferment; for, they never scrupled to accept of livings under an establishment, which yet they would not allow to be a church. The commissioners used to send pursuivants to ransack houses; but, when an individual defended his rights by killing the officer who attempted to enter his house by virtue of a warrant from the commissioners, the ordinary judges declared that he was not liable to prosecution, and dismissed him from the bar ‡. It

* Hist. of Puritans, vol. i. p. 128.

† Neal, p. 590, 591. The author there informs us, that prohibitions were freely granted till Laud governed the church, who terrified the judges from granting them. In regard to the law, &c. see 4th Inst. p. 332, *et seq.*

‡ Simpson's case, before the judges of assize in Northamptonshire, 42d Elizabeth, 4th Inst. 332. There is an account of a similar case, and I presume it is of the same, though it is said to have occurred in the 38th or 39th of Elizabeth, amongst the archbishop's manuscripts at Lambeth. The judges were anxious, as we are there informed, to proceed against the prisoner, but found they could not, as the warrant and whole measures were illegal. The same

was in the time of Charles I. that this court lost all decency, and was no longer under the controul of the laws, as the judges, who were governed by Laud, and changed at the pleasure of the king, did not longer vindicate their own jurisdiction *.

principle was recognised in James the First's time, a recusant having been discharged, because his house had been searched by virtue of such a warrant. No. 943, art. 25..

* See 4th Inst. tit. Of Eccles. Courts. Prohibitions were not denied in James' time. See upon this subject the speech of Mr. Pym, in the 16th of Charles I. where he observes, that it had been found in James' time, that the statute 1st Elizabeth gave no power to inflict punishment, or enforce the oath, *ex officio*. Parl. Hist. vol. ii. p. 540. Prynn's Breviate of the Prelate's intolerable Usurpations, p. 176, *et seq*. Charles I. had published a proclamation in the year 1626, prohibiting the publication of books on certain points of doctrine, and charging the archbishops and bishops to reclaim and repress all such spirits as should break the rule prescribed. "Burton and Prynne," says Heylen, "amongst the rest, were called into the High Commission, and at the point to have been censured, when a prohibition comes from Westminster Hall, to stay the proceedings in that court contrary to his Majesty's will and pleasure, expressed so clearly and distinctly in the said proclamation: which prohibition they tendered to the court in so rude a manner, that Laud was like to have laid them by the heels for their pains." Life of Laud, p. 151-5. Prohibitions were early complained of by the prelates. Strype's Life of Whitgift, 521, 537. The following is a curious letter from Bishop Neile to Laud, dated 23d January 1637: "Your grace in one of your letters gave me an ineling how that his Majesty had assigned the High Commission there for St. Paul's Church, and you wished me to think thereof at the mitigation of fines, and particularly of the Chester fines. In a former letter of mine to your Grace, I informed you, how that we had censured and fined six of the Chester men, viz. C. Brown, Peter Inee, Thomas Hunt, Peter Leigh, William Crawford, and Richard Colbourn, of which six, Brown, Inee, and Hunt have performed the penance enjoined them, and their fines remain to be certified. The other three, Leigh, Crawford, and Colbourn, have made an escape and cannot yet be found: but there is a writ sent hither from the Chief Baron requiring us, under the hands and seals of three or more of us, in parchment, to certify all fines, bonds, and recognizances that concern these three, (Crawford, Leigh, and Hunt,) with the reasons and times

"The Queen," observes Mr. Hume, "in a letter to the Archbishop of Canterbury, said expressly, that she was resolved, "that no man should be suffered to decline, either on the left, or on the right, hand, *from the direct line limited by authority*,

of such fines imposed, and bonds and recognizances forfeited. I cannot hear that any such writ hath been sent to the Commission. I hope my Lord Chief Baron, and the Barons, do not think themselves to have a superintendancy over the proceedings of the Commission. If it were so, I would humbly prostrate the Commission and myself at his Majesty's feet, and beg a release of my executing it. Your Lordship knows, that by our commission we are permitted, in some cases, to proceed according to our discretions. Shall we be accountable to the Barons of the Exchequer for our discretions? It shall be against my will. Your Grace also knoweth that, by our commission, we are directed when and how to certify twice a year under our common seal of office, and not a partial of two or three out of course under our private seals." He concludes by praying that prelates and their chancellors may be made justices of peace. MS. in the Archbishop's Lib. at Lambeth, No. 559. Charles authorised Laud to enforce the oath *ex officio*, to answer interrogatories, and to hold those *pro confesso*, who obstinately refused to take it. Id. No. 571. A paper in Laud's own hand-writing, was adduced against him at his trial, in which there is the following article, being the 11th, "that some course may be taken that the judges may not send *so many prohibitions*." Prynne's Complete Hist. of the Trial and Condemnation of W. Laud, &c. p. 369. In his defence, Laud said, "For the prohibitions, as they were brought to courts, not to me, so they received their answers from them, not from me: and as many admitted in my time as in so many years of any other, I delivered in the papers." Harl. MS. Brit. Mus. No. 787. The title at the beginning of the volume is, "Several papers found in Mr. Dell's study, secretary to Bishop Laud, Archbishop of Canterbury." Charles was not content with altering the patents of the judges, he granted a commission to the privy council to hear and determine all questions that might arise in the different courts about jurisdiction, and for that purpose to call the judges before them, to hear the parties, &c. The power to grant such a commission, it is said in the preamble, "is not only our undoubted and hereditary right by our prerogative royal, but also agreeable to the practice of our royal progenitors in this our kingdom, and

*and by her laws and injunctions* *." But the learned author has not attended to the express words of the letter, which he quotes erroneously, and has thus committed a mistake of no small consequence to a thorough knowledge of Elizabeth's government. The letter, which is dated in August 1571, runs thus:—"Wher we required you, as the metropolitan of our realme, and as the principall person in our commission for causees ecclesiasticall, to have

to the equity and true intention of our laws." Rym. Fœd. vol. xix. p. 280, *et seq.* dated 6th May 1631. When Laud became supreme in the council, it is easy to conceive how, in regard to the jurisdiction of the Court of High Commission, he would exercise the powers thus committed to him. But the following passage from Clarendon, is decisive of the question as to this court. After stating, that whilst it was exercised with moderation, it was an excellent means to vindicate and preserve the peace of the church,"—he says, "But of late, it cannot be denied, that by the great power of some bishops at court, it had much overflowed the banks which should have contained it; not only in meddling with things that in truth were not properly within their cognizance, but extending their sentences and judgments in matters triable before them, beyond that degree that was justifiable; and grew to have so great a contempt of the common law and of the professors of it, (which was a fatal unskilfulness in the bishops, who could never have suffered whilst the common law was preserved,) that prohibitions from the supreme courts of law, which have, and must have, the superintendancy over all inferiour courts, were not only neglected, but the judges reprehended for granting them, (which, without perjury, they could not deny,) and the lawyers discountenanced for moving for them (which they were obliged in duty to do.) So that thereby, the clergy made almost a whole profession, if not their enemies, yet very undevoted to them." The fines, as we learn from the noble historian, were more frequent and heavier after the repairing of St. Paul's began—a circumstance likewise evinced by Neill's letter, quoted above. He says, that "the fines were sometimes above the degree of the offence, *had the jurisdiction been unquestionable, which it was not.*" Hist. vol. i. p. 283. octavo edit. 1717.

* Vol. v. p. 151.

good regard, that such uniform ordre in the divyne service, and rules of the chirch, might be duly kept, *as in the lawes in that behalf is provyded*, and by our injunctions also declared and explaned:" (the injunctions were issued in the first of her reign by virtue of the act of uniformity,) "and that you shuld call unto you for your assistance certen of our bishopps, to reform the abuses and disorders of sondry persons, sekyng to make alteration therin. We understandyng that, with the help of the reverend Fathers in God, the Bishops of Wyncester and Ely, and some others, you have well entred into some convenient reformation of thyngs disordred; and that now the said Bishop of Ely is, by our commandment, repayred into his diocess, whereby you shall want his . sistance, we myndyng to have a perfect reformation of all abusees attempted to deforme the unyformyty prescribed by owr lawes and injunctions, *and that none shall be suffred to declyne ether on the left or on the right hand from the direct lyne lymitted by authorite of our sayd lawes and injunctions, do ernestly, by our authorite royall, will and chardg you, by all means lefull, to procede herein, as you have begon**;" &c. Taken as a whole, this letter cannot be considered indicative of an arbitrary character in the government. The queen does not pretend to act by her own authority, but by that which had been committed to her by the legislature; and, however the policy of enforcing uniformity may be arraigned, (we

* Murden. Coll. of State Papers, p. 183.

shall not repeat what we have said on that point in the preceding Chapter,) Elizabeth cannot be accused, in this instance, of exceeding the limits prescribed by Parliament.

Martial Law.

"But martial law," says Mr. Hume, "went beyond even these two," (the courts of Star Chamber and High Commission) "in a prompt, and arbitrary, and violent method of decision. Whenever there was any insurrection or public disorder, the crown employed martial law, and it was, during that time, exercised not only over the soldiers, but over the whole people: any one might be punished as a rebel, or an aider or abetter of rebellion, whom the provost-marshal, or lieutenant of a county, or their deputies pleased to suspect." In opposition to so bold and sweeping an assertion, we shall set the following authorities. Sir Thomas Smith, who held the office of Secretary of State under Edward VI., and afterwards under Elizabeth, writes thus upon martial law: "In warre time, and in the field, the prince hath also absolute power, so that his word is a law. He may put to death, or to other bodily punishment, whome hee shall thinke so to deserue, without processe of lawe or forme of judgment. *This hath beene sometime used within the realme before any open warre in suddaine insurrections and rebellions, but that not allowed of wise and graue men, who, in that their iudgement, had consideration of the consequence and example, as much as of the present necessity, especially when, by anie meanes, the punishment might*

*haue been done by order of lawe.* This absolute power is called martiall law, and euer was, and necessarily must be, used in al camps and hosts of men, where the time nor place doe suffer the tarriance of pleading and processe, be it neuer so short, and the important necessitie requireth speedie execution, that with more awe, the souldier might be kept in more straight obedience, without which neuer captain can doe any thing vaileable in the warres*." "If a lieutenant, or other that hath commission of marshall authority," says Sir Edward Coke, "in time of peace, hang or otherwise execute any man by colour of marshall law, *this is murder*, for this is against Magna Charta, cap. 29. and is done with such power and strength, as the party cannot defend himself; and here the law implieth malice. *Vide* Pasch. xiv. c. 3. in Scacario, the Abbot of Ramsey's case. Thom. Countee de Lancaster being taken in an open insurrection, was by a judgment of marshall law put to death, in *anno* 14 Ed. IV. This was adjudged to be unlawful, *eò quòd non fuit arrainiatus, seu ad responsionem positus tempore pacis, eò quòd cancellaria, et aliæ curiæ regis fuerunt tunc apertæ, in quibus lex fiebat unicuique, prout fieri consuevit, quòd contra cartam de libertatibus cum dictus Thomas fuit unus parium et magnatum regni non imprisonetur &c. Nec dictus rex super eum ibit, nec super eum mittet, nisi per legale judicium parium suorum, &c. tamen tempore pacis*

* Smith's Commonwealth of England, b. ii. c. iv.

*absque arraniamento, seu responsione, seu legali judicio parium suorum, &c. adjudicatus est morti* *."

In the preceding chapter a view has been taken of the state of society; and it has been shewn that the higher, and even the middling classes, instead of deprecating certain commissions of martial law, eagerly desired them, the aristocracy conceiving that they had no cause to dread those commissions when the execution was left to themselves, who arrayed the military. The insurgents could only be put down by force; and I have not met with evidence of any executions by martial law of those taken with arms in their hands, while the legal authorities held that the commission was so far from warranting a recourse to martial law, except in the case of actual necessity, that the act would have been murder in the agents. Proclamations, containing threats of punishment against law, were frequently made; but they were only used *in terrorem*, without the slightest intention of being carried into effect †: and we may conclude that, as it was perfectly understood, the commission of martial law would not justify any illegal

* 3d Inst. p. 52. Sir M. Hale says, that, "if in time of peace, a commission issue to exercise martial law, and such commissioners condemn any of the king's subjects not being listed under the military power, this is without all question, a great misprision, and an erroneous proceeding, and so adjudged in parliament in the case of the Earl of Lancaster. And in that case the exercise of martial law in time of peace is murder." Pleas of the Crown, vol. i. p. 500. See also his Hist. of the Common Law, vol. i. p. 53.

† Sir Matthew Hale informs us, that proclamations were issued with penalties merely *in terrorem*, as none of the penalties could be inflicted. Pars. Sec. of a Treatise by Hale in Hargrave's State Tracts, ch. 9.

act, so the object was the same as in the case of proclamations—to inspire terror. The mere commissions, therefore, and Mr. Hume refers only to them, prove nothing.

Mr. Hume proceeds thus: "Lord Bacon says that the trial at common law, granted to the Earl of Essex and his fellow conspirators, was a favour; for that the case would have borne and required the severity of martial law." The authority of Bacon's name demands attention, though that great philosopher was ever ready to prostitute his talents and his pen to any state purpose which promised to advance his own fortune: but, what says he of the very production from which Mr. Hume draws his statement?—That it was written at the express desire of the Queen, and repeatedly perused and altered, both by her and her council. "Myself," says he, "indeed, gave only words and form of style in pursuing their directions *." In order to understand the meaning of this state paper, (for it was nothing else,) entitled the Declaration of the Practices and Treasons of Robert, Earl of Essex, it is proper to remark that Essex was a great favourite with the people, who (after that nobleman had paid the mulct of his offences, apparently the offspring rather of a disordered mind, than of any purpose to overturn the government, and yet such as no government could overlook) were so enraged at his fate, that it was deemed necessary to quiet them by this state paper. But, though it be said

* Bacon's Works, Birch's edit. vol. ii. p. 136.

in the outset, that the case would have borne, and required the severity of martial law, that point is barely touched, not dwelt on, and the production must be considered an homage to public opinion, to which the monarch would not have descended, had she not felt the influence of the popular voice. Surely, however, a state-paper, published with a view to compose the public mind, and to impress the idea of her majesty's clemency as well as of the greatness of the insurrection, cannot be regarded as a proof either of the powers really exercised, or arrogated, by the sovereign: nor ought the historian to have quoted Bacon as his authority, without mentioning that he had virtually disclaimed the publication. Elizabeth's conduct in regard to the unfortunate Essex, on a former occasion, sufficiently bespeaks her respect for the laws and her solicitude for popularity. She had resolved to bring that nobleman to trial, but was dissuaded by Bacon, who told her, that, as the Earl was well spoken, and possessed "the eloquence of accident,—the pity and benevolence of his hearers,"—it would not be for her honour to bring his case into public question *.

* Bacon's Apology for his conduct to Essex in his Works, vol. ii. p. 60. It is strange that Mr. Hume should not have adverted to this instead of ascribing the abandonment of Elizabeth's purpose to her returning tenderness towards that nobleman. The Queen then thought of publishing something from the Star Chamber to vindicate the Earl's restraint. Bacon also dissuaded her from that, assuring her that it would have a quite different effect upon the people from what she anticipated, as they would say Essex had been wounded behind his back. She would not be dissuaded however, yet she afterwards confessed that Bacon's advice ought to have been followed. P. 131.

"We have seen instances," continues Mr. Hume, "of its" (martial law) "being employed by Queen Mary in defence of orthodoxy." Now, in the first place, Mary's reign, as we have already observed, ought never to be cited in illustration of the ancient government of England. In the second place, though it be true that a proclamation was issued against books of heresy, treason, and sedition, wherein it is declared, that whosoever had any of these books, and did not presently burn them without reading them, or shewing them to any other person, should be esteemed rebels, and without any farther delay be executed by martial law, yet it does not appear ever to have been acted upon, nor even to have been followed by any commission of martial law. Besides that, as we have already seen, upon the highest authority, proclamations with illegal penalties were often issued without any view to their being carried into effect, the proclamation unaccompanied with such a commission, was innocuous, since no person was authorized to act upon it.

The proclamation was issued on the 6th of June 1553, only a few months before her death, as she died on the 17th of November following*: And we may remark, in passing, that it is strange Mr. Hume has stated the fact under the head of transactions in the year 1555. Bad as Mary's government was, it never arrived at the stage of despotism ascribed to it by the elegant historian: and as it became worse towards the close of her

* Burnet, vol. iii. p. 457, 466.

reign, so the people indicated by many circumstances that they could not have endured it much longer*.

"There remains a letter," proceeds Mr. Hume, "of Queen Elizabeth's to the Earl of Sussex, after the suppression of the northern rebellion, in which she sharply reproves him because she had not heard of his having executed any criminals by martial law; though it is probable that near eight hundred persons suffered one way or other on account of that slight insurrection." Now, besides that there appears to be a great mistake in regard to the number that suffered†, it may be remarked,

* In addition to what has been said in the preceding chapter, we shall just refer to Burnet, vol. iii. p. 649, *et seq.* See also p. 164, 165.

† Mr. Hume's statement regarding the number that suffered by the executioner, (see also p. 164.) is founded upon an account, given by Leslie, Bishop of Ross, of his negociations: But, as that individual was the great agent of Mary, Queen of Scots, for stirring up this rebellion, (in his account of his Life, he takes credit to himself for his indefatigable pains in obtaining the support of foreign states to this Catholic enterprise,) and as he was long confined for his participation in that affair, his testimony to such numerous executions, numerous, indeed, when it is considered that only seventy-two suffered in the preceding reign for Wyat's rebellion, would be entitled to little credit while contradicted by Camden, and unvouched by any other authority,—were it to that effect. But there appears to have been a great mistake in the matter. Mr. Hume has quoted from the printed copy of Leslie's work, in Anderson's Collection. Anderson, however, states that he took it from a manuscript in the Advocates' Library at Edinburgh, which he conjectured from the character to be in the hand-writing of the bishop's secretary. But, on inspecting the manuscript, I found, to my astonishment, the number VIII, instead of eight hundred. Now, Camden tells us, that sixty-six petty constables were executed at Durham, and some others elsewhere, whence I conclude, that the number meant by Leslie was eighty. If this be disputed, I would ask, then, why not substitute any other number as well as 800, which, besides being contradicted by Camden, carries improbability on the face of it? Mr. Anderson indeed says, that he

with all deference to this accomplished writer, that the very fact of criminals not having been executed by martial law in this case, is a striking proof of the general feelings and understanding of the age. For the northern rebellion was not by any means a slight insurrection, even according to Mr. Hume's account of it in the proper place. Some of the chief nobility were concerned in the conspiracy; foreign powers encouraged and assisted it; and it was only prevented from being most formidable, by a discovery of their designs having obliged the rebels to take the field too soon. As it was, however, the insurgents, regularly trained and headed by the Earls of Northumberland and Westmoreland, were four thousand foot and sixteen hundred horse strong, a considerable army for the time, and, independent of an expected supply of troops and arms from the Duke of Alva, governor of the Low Countries, they confidently anticipated a junction with all the Catholics in England, an event no less dreaded by the

compared this copy with one in a more modern hand in the Cotton Collection, and that he took from the last an additional part of the narrative which the other wanted, as not having been brought so far down: But there is not a syllable about any correction; and, if the numbers do disagree, whether shall what may be termed an original, or an after copy, be preferred? I omitted, while I attended the British Museum, to inspect the copy amongst the Cotton manuscripts; but I shall endeavour to have the fact ascertained, and give it in note C, at the end of the volume.

There were two risings in the north, (Camden in Kn. p. 412, 13,) and in the second were three thousand borderers, who were mere robbers; yet the Queen published an act of indemnity immediately after they were routed.

The proclamation against bulls, &c. in 1570, is of a very different nature from that of 1588, and shews the moderation of government. Strype's Ann. vol. i. p. 575.

Protestant party, than hoped for by their enemies. Indeed the activity of government prevented another rising in Suffolk*. The leaders issued proclamations in a regular form, and every thing bore the appearance of a terrible convulsion. Dismay prevailed amongst Protestants who had so lately escaped from the cruel tyranny of Mary†: and if we may draw an inference from their general complaints of her majesty's ill-judged clemency to Catholics, they burned with a fury towards the insurgents, at least equal to her own‡. A fact must always be taken along with all its circumstances; and whoever weighs all these matters, will cease to regard this as indicating that arbitrary character in the government which has been ascribed to it.

"But the kings of England," continues Mr. Hume, "did not always limit the exercise of this law to times of civil war and disorder. In 1552, when there was no rebellion or insurrection, King Edward granted a commission of martial law, and empowered the commissioners to execute it, as should be thought by their discretions most neces-

* Strype's Annals, vol. i. p. 566. "A conspiracy was likewise hatching in Norfolk, Id. p. 577. See also Mr. Hume's own account of this rebellion in the body of his History. There were an immense number of "masterless" men in the north about this time: Warrants were issued against them, and thirteen thousand were apprehended; which broke the strength of the rebellion, Strype's Annals, vol. i. p. 535.

† A lively picture of the alarm is to be found in Strype's Annals, vol. i. p. 559. See upon the whole, p. 540, *et seq.* See also a letter, from Elizabeth to Essex, amongst the documents regarding the rebellion, in Haynes, p. 585. *et seq.*

‡ Elizabeth was blamed by P. Wentworth in Parliament for her clemency to Mary Queen of Scots.

sary." In order to understand the object and cause of this commission, the reader must recal to his remembrance the state of the country at the time. The lower classes, reduced by the change in manners, as well as by the Reformation, to beggary, and detesting the nobility and gentry as the authors of their misery, were almost in a continual state of insurrection during Edward's reign; and, as the aristocracy were threatened by the insurgents, so they ardently desired sanguinary measures against that unhappy class—a desire in which most who profited by the new system appear to have concurred. On the other hand, the prince, or rather protector, was so far from acting out of any arbitrary spirit, that he pitied the poor, and endeavoured to alleviate their misery, by executing the laws for preserving the old state of things: the protector's lenity, by the hostility it excited against him amongst the higher classes, proved the main cause of his ruin,—a symptom of weakness rather than of exorbitant power in the executive. But, after his removal, the fury of the aristocracy against the tumultuous being no longer restrained, that commission, which Mr. Hume has referred to, was procured from the throne; and, as the very class who solicited, were allowed to execute it, they had no apprehensions of their own rights being affected by such a grant *. It is inconceivable, however, upon what

* Besides generally referring to the preceding Chapter, and the authorities there quoted, we shall here refer to the following: Strype's Ec. Mem. vol. ii. c. xvii. p. 150, 152 c. xxi. p. 166, 171, 182, 192,

principle the learned historian should have said that there was no insurrection at that time, for Strype, his own authority besides in various parts of his work, describing the country as subject to the most dreadful commotions during this reign, thus expresses himself in the very passage on which the historian founds his statement: "Popular disturbances and tumults seemed now to be very frequent; and the common people, uneasy under the present juncture, which occasioned, surely, that severe commission which was given out this month of March, to John Earl of Bedford, &c. to put in execution all such martial laws as should be thought necessary to be executed, and instructions were also given in nine distinct articles *." The commission may be pronounced cruel and impolitic; but it argued any thing rather than power in the prince; and there is no evidence of its having been acted upon.

"Queen Elizabeth too," says Mr. Hume, "was not sparing in the use of this" (martial) "law. In 1573, one Peter Burchet, a puritan, being persuaded that it was meritorious to kill such as opposed the truth of the gospel, ran into the street, and wounded Hawkins, the famous sea-captain, whom he took for Hatton, the queen's favourite. The

204. c. xxvii. p. 219, 353, App. p. 105, 109, &c. See also articles against Somerset in Howel's State Trials. By the way, had Mr. Justice Blackstone consulted Strype's Mem, he would have discovered the origin of Lords-Lieutenants, &c. who were first appointed in 1540. Ec. Mem. vol. ii. c. xx. p. 373. Black. Com. v. i. p. 411.

* Strype's Ec. Mem. vol. ii. p. 378, 458–9.

queen was so incensed, that she ordered him to be punished instantly by martial law; but, upon the remonstrance of some prudent counsellors, who told her that this law was *usually* confined to turbulent times, she recalled her order, and delivered over Burchet to the common law." Of the two authorities referred to by Mr. Hume, Strype and Camden, Strype's account of the matter is the most particular: and, in illustrating a case of such importance to the constitutional history of England, we shall make no apology for giving his words: "This wicked principle of murthering for God's sake, the queen apprehended so much danger in as that of her own life, as well as that of others of chief rank about her, and so enraged her, that, at first, she commanded this murtherer to be immediately executed by martial law. And a commission for that purpose was drawn up; and this she resolved to do, as her sister Queen Mary had done, in that severe reign, towards Wyat,"—It must have been towards one of Wyat's followers, if towards any; for he was himself regularly tried—"especially having heard it by report of the Earl of Leicester, and he from the admiral. Yet not with any their approbation of such rigorous doings. So the queen in her great closet, at service therein, gave order to Mr. Secretary to bring to her the commission for execution of this man by martial law, to be signed by her after dinner. But the Earl of Sussex, Lord Chamberlain, and the Lord Admiral, were much against it. And the Lord Treasurer was not then at court, whose only

advice was then wanted, to prevent it. The earl, therefore, even while he was at dinner, wrote to him, it being the 28th of October, 'first praying God to put it into the queen's heart to do the best, and then acquainting him with the particulars: as that the lord admiral was greatly grieved with the speech that he should devise it, when as he was directly against it. That, indeed, he had told my Lord of Leicester of the execution done in London, in the rebellion of Wyat, but he never told it to the queen. That the Earl of Arundel was also very vehement against it in speech to him (the lord chamberlain.) He added, that the queen asked for the lord treasurer, and seemed to look for his being at court, because it was holy-day.' At length, by the counsel, as it seems, of the lord treasurer, the queen set aside that purpose of her's of Burchet's speedy execution after that manner *."

Of Wyat's adherents, fifty are said to have been executed in London, and twenty-two elsewhere †.

* Hayne's An. vol. ii. p. 288.

† Mackintosh, on the authority of a letter from Mons. de Noailles, (then ambassador in England) to the Constable of France, says, that four hundred persons are said to have suffered for this rebellion; but the statement by Noailles is absurd, and the cause of it may be conceived from the compliment which he pays to his own good king, by contrasting his clemency towards the multitude in a sedition at Bourdeaux about the Gabelle, with the English queen's cruelty. Embass. de Noailles, vol. iii. p. 124. The Protestants exaggerated Mary's cruelty, and loudly condemned it in this instance. It cannot be conceived, therefore, that the number would be diminished, and the various executions are distinctly enumerated by them. The account by Leslie, Bishop of Ross, of the executions on the northern rebellion under Elizabeth, is, as we have seen, equally questionable. But the historian seems found

But these appear to have been regularly arraigned and condemned. Wyat was taken on the 7th of February, and the executions took place on the 14th,—and had it been otherwise, the matter must have been too notorious, to have been unknown either to Elizabeth, who was confined on a suspicion of having been engaged in the conspiracy, or to any one else, and would have been particularly mentioned by historians: there must have been only one execution therefore, by martial law, not executions; indeed it is execution which is mentioned. If any such execution really occurred, the probability is, that it was one of Bret's soldiers, who, having been sent against the insurgents, went over with their leader to the opposite party. Whoever he was, he was a man of no note, as all such were regularly condemned.—If any case could have justified a resort to martial law upon the captives, it was Wyat's; for the insurrection was, at one time, most formidable: he expected, and the other party apprehended, that the Londoners would join him; and, had he not been too irresolute and feeble-minded for such an enterprise, it might have been attended with a different result *.

Camden's account of Elizabeth's intention towards Burchet, is this—"The queen was so extraordinarily incensed at Burchet's assassinating Hawk-

of large numbers on those occasions: they indicate the greater despotism in the prince, and form a contrast with the mildness of the Stuarts.

* Burnet, vol. iii. p. 181, *et seq.* Stryp's Ec. Mem. vol. iii. p. 86, *et seq.* Heylin's Hist. of Queen Mary, p. 33, *et seq.*

ins, who was in great favour, that she commanded that the man should be presently executed by martial, or camp law, till she was informed by some prudent persons, that martial, or camp law, was not to be used but in camps, and in turbulent times; but that at home, and in times of peace, the proceedings must be carried on in the way of a judiciary process *."

It is unnecessary to observe, in regard to that case, that it is so far from supporting the statement of Mr. Hume, that it does exactly the reverse. Had martial law been common, could it ever have happened that one solitary instance, and that doubtful too, which is said to have occurred in the hour of a great rebellion carried into the very capital, afforded the only pretext for the queen's intended proceeding? When is it, too, that courtiers so strenuously oppose an arbitrary purpose in the sovereign? Only when it is inconsistent with the general spirit of the government.

"But," proceeds Mr. Hume, "she" (the queen) "continued not always so reserved in exerting this authority. There remains a proclamation of her's, in which she orders martial law to be used against all such as import bulls, or even forbidden books and pamphlets, from abroad; and prohibits the questioning of the lieutenants, or their deputies, for their arbitrary punishment of such offenders, *any law or statute to the contrary notwithstanding.*" It has already been said, upon the highest autho-

* Kennet's Coll. vol. ii. p. 449. The translation is literal. See the original, Pars ii. p. 269. Ed. 1677.

rity, that proclamations were frequently issued, containing a threat of penalties which were not meant to be carried into effect, but were published merely for the purpose of creating a wholesome terror amongst certain classes. Yet, though the proclamation alluded to by the historian was not acted upon, the reader may perhaps be of opinion, that if the fact were as stated by him, the government must have been very arbitrary, and, therefore, it will be necessary to investigate the matter.

In entering upon this point, we must repeat, that a case must always, with a view to understand it, be considered along with all its adjuncts, and never was this more necessary than on the present occasion. Besides the open rebellion in the north, by the Catholic party, during this reign, the Papists were ever engaged in plots and conspiracies against the queen's life and the established government. To encourage these designs, the pope issued a bull, in the early part of the reign, absolving the subject from his allegiance, and instigating him, under the pain of damnation, to dethrone Elizabeth, and proclaim a Catholic prince *. The bull, after having been privately circulated, and having occasioned the northern rebellion, was affixed by John Felton to the Bishop of London's gates †, and set up at Pont St. Esti-

* Bacon's Works, vol. ii. p. 43. He, with others, ascribes the northern rebellion to it: this is also done in the statute, 13 Eliz. c. 2.

† Strype's Annals, vol. i. p. 486; vol. ii. p. 17. Camden in Ken. p. 427, et seq. Felton seemed to fly, thinking the act meritorious, and he was reputed a glorious martyr. Camd. p. 148.

enne in Paris on the same day: the sensation created by it may be imagined from the language of Bishop Jewel, who, in a sermon, characterised it "as a practice to work much inquietness, sedition, and treason, against our blessed government: For it deposed the queen's majesty (whom God long preserve) from her royal seat, and tore the crown from her head. It discharged all her subjects from their true obedience: It armed one side of them against the other: It emboldened them to burn, to spoil, to rob, to kill, to cut one another's throats *." Parliament, justly alarmed by this, and other practices of the Romish party, passed acts, making the importation of bulls from Rome, which had been previously punishable with the pains of præmunire, high treason; and likewise declaring it to be treasonable to compass, or imagine to depose the queen, or intend her bodily harm, or advisedly to deny her title, or to affirm that she was a heretic, schismatic, illegitimate, &c. or to incite foreigners to invade the kingdom, &c. or to deny the power of parliament to regulate the succession †. These statutes were evaded, and therefore it was afterwards made treason to practise to withdraw the subjects from their obedience to their prince and the established religion, or to be reconciled to the church of Rome ‡. Even this, however, did not frighten Catholics into submission, who, esteeming it a glory to destroy

* Strype's Annals, vol. i. p. 539.
† 13 Eliz. c. 1. and 2.
‡ 23 Eliz. c. 1.

an heretical princess, no sooner failed in one conspiracy than they engaged in another. Of the public feeling, some idea may be formed from the voluntary association into which the peers and commons of parliament, not in their character, of legislators, but of noblemen and gentlemen, entered, in the year 1584 or 1585, binding themselves by oath to revenge the queen's murder, should the malice of her enemies prove successful *. The Babington conspiracy followed, and in 1588, the *annus mirabilis*, as it is called, the Spanish armada threatened general destruction. The invaders expected that the English Catholics would flock to the standard of the Duke of Parma the instant he landed, and, though a few of that body proclaimed their determination to resist the invasion, the Protestants apprehended the event of which their enemies were so confident. While general consternation prevailed, as it was scarcely believed that the kingdom possessed resources to meet so mighty an armament, and the fear of internal commotion increased the alarm; while every preparation testified the greatness of the emergency, and Elizabeth displayed a heroism which must render her memory respectable to the latest ages, the Pope issued a bull, declaring her accursed, and deprived her of her crown, and committing the invasion and conquest of the realm to the Catholic king, with power to execute his purpose by sea and land, and to take the

* Strype's Annals, vol. iii. p. 293.

crown to himself, or to limit it to such a potentate as should be agreed on by his holiness and him. This bull was followed by a great many copies of an English book, the production of Cardinal Allen, which was printed at Antwerp, and sent into the kingdom even while the Armada was daily looked for, (and another by the same author was ready for publication) denouncing Elizabeth as a usurper, heretic, and schismatic, as illegitimate, &c. equally unworthy of rule and of life; charging all to join the Duke of Parma, and proclaiming it to be lawful to lay violent hands on the Queen. Other works of a similar tendency were published at the same time*. At so awful a crisis, when the existence of every thing dear to Englishmen was at stake, the importation of bulls from Rome, or of forbidden books, acts of high treason in themselves, assumed the blackest dye, and may fairly be pronounced in familiar, yet expressive language, a beating up for recruits to rebellion, for the purpose of forming a junction with an invading and inveterate enemy. But there was no time left to assemble parliament, that new measures against treason of so audacious a nature might be devised in the usual course; and the executive, for the common safety, was justified on such an occasion, in adopting an extraordinary, and illegal, remedy for the evil. The plea of necessity ought ever to be received with caution, but where it does exist, it is, of course,

* Strype's Annals, vol. iii. b. ii. c. 18.

paramount to all law *. It is to the credit of Elizabeth's government, however, that this proclamation, which Mr. Hume has adduced as a proof of the despotism of the times, was merely used *in terrorem*, according to a practice, as has already been seen, sometimes resorted to; and that it was not followed by any commission even verbally authorizing the carrying of it into effect. It is worthy of remark, that parliament, after the danger was past, while it gave the tribute of applause to the Queen, which her conduct had so fairly earned, testified its watchfulness over the public liberty, by petitioning for leave to bring in a bill of indemnity for all illegal imprisonments in the season of alarm †.

Thus the case, which Mr. Hume has represented as the abstract of tyranny, appears, upon examination, in a very different light indeed: And had that elegant writer attended to the date of the proclamation, he could not have fallen into such a mistake; for, in relating the affairs of that memorable period, he says, that Elizabeth, "while she roused the animosity of the nation against popery, treated the partizans of that sect with moderation, and gave not way to an undistinguishing fury against them." "She rejected all violent counsels, by which she was urged to seek pre-

* The proclamation is dated on the 1st July. The Armada had retired for a season, but sailed again for the English coast on the 15th of that month.

† Parl. Hist. vol. ii. p. 258.

tences for dispatching the leaders of that party: She would not even confine any considerable number of them."

"We have another act of hers," (Elizabeth's) continues the historian, "still more extraordinary. The streets of London were much infested with idle vagabonds and riotous persons. The Lord Mayor had endeavoured to repress the disorder; the Star Chamber had exerted its authority, and inflicted punishment on the rioters. But the Queen, finding these remedies ineffectual, revived martial law, and gave Sir Thomas Wilford a commission of Provost-martial, granting him authority, and commanding him, upon signification given by the Justices of Peace in London, or the neighbouring counties, of such offenders worthy to be speedily executed by martial law, to attack and take the same persons, and in the presence of the said justices, according to the justice of martial law, to execute them upon the gallows or gibbet openly, or near to such place where the said rebellious and incorrigible offenders shall be found to have committed the said great offences." "I suppose," observes Mr. Hume, "it would be difficult to produce an instance of such an act of authority nearer than Muscovy." The only authority quoted by this writer is the commission itself; but, surely, an insulated state paper is not calculated to afford sufficient information upon so important a subject, since it is impossible to estimate a measure correctly, without a thorough knowledge of all the circumstances out of which it emerged, and with which it

was accompanied; particularly as proclamations and commissions were sometimes issued *in terrorem*, though it would have been murder in the commissioners to have acted upon them. The state of society, as we have described it in the preceding chapter, was, throughout England, wretched; and London, at this time, was greatly infested with vagrants, some of them discarded soldiers, others assuming that and various fictitious characters, who colleagueing with the apprentices, then a powerful, as well as a numerous body, excited alarming insurrections. Some years before, the vigilance of the city government had frustrated one great attempt by the apprentices against the foreigners, who were generally hated as engrossing the trade, which the people conceived to be their own by birthright. This failure did not curb the licentiousness of that body, who had now acquired such an increase of strength by their junction with the vagrants; and as milder remedies were resorted to in vain, the city magistracy, who, about this period, evinced a high spirit in support of their privileges*, themselves applied to the throne, through their mayor, for martial law, as the only means of repressing the disorders;—a clear proof that they apprehended no danger from such a precedent. Eliza-

* The instances in which the city, about this time, showed its spirit, were, 1st, In resisting a demand of benevolence-money, by Sir J. Hawkins; and, 2dly, In maintaining their privileges against an attempt by the court to interfere with the choice of their Recorder. Maitland's History of London, vol. i. p. 277, 278.

beth, at their request, granted the commission to Wilford; but he, apparently satisfied that it could not warrant the exercise of the illegal power that it verbally conferred, patrolled the streets with a band of armed followers, and, having secured five of the ringleaders, carried them before the justices for examination only. The justices committed them for trial, and the offenders, having been regularly arraigned and convicted at Guild-Hall of high treason, suffered the punishment of their crimes *. Most assuredly the learned historian might have discovered an instance of a proceeding much more arbitrary than this, without travelling to a great distance, much less to Muscovy †; and he

* In the commission to Wilford, it is said, that "there had been sundry great and unlawful assemblies of a number of base people, in riotous sort; and that the punishment inflicted by the Star Chamber had failed, as such desperate people cared not for such punishment." Rym. Fœd. vol. xvi. p. 279. See Maitland's Hist. of Lond. vol. i. p. 278, 279. Stowe's Survey by Strype. Stowe's Annals, p. 769, 770. The same species of insurrection as happened on May-day in the time of Henry VIII. was apprehended from the appr[illegible] few years before. Mait. p. 271.

† By 1st Geo. I. it is enacted, that if twelve persons assemble to the disturbance of the peace, and being commanded to disperse by proclamation of any justice of the peace, sheriff, under-sheriff, or Mayor of a town, shall continue together for an hour afterwards, the contempt shall be felony, without benefit of clergy. Further, if the reading of the proclamation be by force opposed, or the reader in any manner wilfully hindered from reading it, such opposers and hinderers are felons without benefit of clergy, and all persons to whom the proclamation ought to have been made, and who, knowing of the hinderance, do not disperse, are likewise felons, without benefit of clergy. Black. Com. vol. i. p. 279. Yet, according to Mr. Hume's idea, the English government then inclined too much to republicanism. We say nothing of the measures adopted in Ireland.

must have been ignorant indeed of the temper of the French government, to which he was so much attached, not to know that such disorders in that country would have immediately provoked the most sanguinary measures.

Offices of High Constable and Earl Marshall.

"The patent of High Constable," says Mr. Hume, "granted to Earl Rivers, by Edward IV. proves the nature of the office. The powers are unlimited, perpetual, and remain in force during peace as well as during war and rebellion. The parliament in Edward IV.'s reign acknowledged the jurisdiction of the Constable and Marshall's court to be part of the law of the land." The elegant historian has not, in other respects, given a true picture of that age; but, in this instance, he has outraged the case to a most extravagant degree. The office of High Constable was hereditary, and ceased with Edward Duke of Buckingham, beheaded on a charge of treason in the 12th of Henry VIII.*; and as the Earl Marshall was, by some, supposed to have been the Constable's deputy, it was questioned whether one could be legally constituted to that office after the other ceased. Earls Marshalls were, however, subsequently created, and the office was at times put into commission. But the judicial powers of the office extended only to the authority belonging to a Court of Chivalry, and were not permitted to interfere with the administration of justice in any thing which regarded the common law.

* Hollinshed, vol. ii. p. 865. See there a list of all the High Constables. Note by Selden to Fort. De Laud. Leg. Ang. No. 19.

The Steward and Marshall of the household had early attempted to extend their very limited jurisdiction, which related to contracts and trespasses within the verge of the Court; and repeated statutes repressed the usurpation *: but the High Constable and Marshall had exercised their powers with moderation, probably owing to the jealousy which the monarch must have entertained of an hereditary office like the Constable's, till the time of Richard II. when the Commons complained of a late encroachment from that quarter, upon the common law; and, by the 8th of that king, c. 2. these great officers were ordained to confine themselves within the ancient limits of their offices. This, however, did not repress the evil, and, therefore by the 13th of the same king, c. 5. it was provided, "at the grievous complaint of the Commons, that the Court of Constable and Marshall hath encroached, and daily doth encroach, contracts, covenants, trespasses, debts, and detinues, and many other actions pleadible at the common law, in great prejudice of the king and of his Courts, and to the great grievance and oppression of the people," that this court should not interfere with any thing determinable by the common law; and declared, that its duty related exclusively "to contracts touching deeds of arms and of war out of the realm, and also of things that touch war within the realm, which could not be determined and discussed by the

* Antic. Sup. Cart. 5 Ed. II. c. 26. 27 Ed. II. st. 2. c. 5. 5 Ed. III. c. 2. 10 Ed. III. c. 1.

common law," &c. The law was never altered upon this subject, and it was not till the time of Edward IV. that the people had again reason to complain of the high constable, in consequence of the monstrous patent granted by that prince, in the 7th of his reign, to his father-in-law, Earl Rivers. But whoever calls to mind the state of public affairs at that period, convulsed, as the country was, with intestine dissension, and enjoying only a respite from a ferocious civil war*, will never consider such a patent, when the country was necessarily under a sort of military government, as affording any evidence of the constitutional principles of England, in contradiction to the united force of all other authorities. Sir Edward Coke pronounces it "a most irregular precedent," and says that, "therefore, by no means the same, or the like, is to be drawn into example †." But it is inconceivable how Mr. Hume should have adduced this as a proof of the tyranny of Elizabeth's time, when the office of High Constable had so long ceased. Had he consulted any authority whatever, for all authorities agree upon this point, he must at once have been satisfied of the error into which he had fallen. The nature of the Constable and Marshall's jurisdiction is thus described by Lambard, whom we quote, because we have already seen how far he goes in support of the prerogative, and he dedicated his

* Mr. Hume ought to have remembered the old maxim, *Leges silent inter arma.*

† 4 Inst. p. 127.

work to Sir Robert Cecil, then Secretary of State: "The Court of the Constable or Marshall of England determineth contracts touching deeds of arms out of the realm, and handleth things concerning war within the realm, as combats, blazons, armoury, &c. but it may not deal with battle in appeals, nor, generally, with any other thing that may be tried by the laws of the land*." Crompton, Camden, Cotton, Coke, and others agree with Lambard: As to the act of Edward VI. which, according to Mr. Hume, acknowledged the Constable's and Marshall's jurisdiction to be part of the law of the land, it does not appear how such an enactment could affect the present question, unless it had abrogated the statutes of Richard II., which, according to the highest authorities, Coke, Hale, &c. never were annulled; and surely the learned author must have committed some strange mistake, in quoting the 7th Edward VI. c. 20. for there is no such chapter, and I have not been able to discover any statute during that reign applicable to the Court of Constable and Marshall †. It was during the reign of Charles, I. that a Court called the

* Arch. p. 51.

† Fortescue De Laud. Leg. Ang. c. 32, with note by Selden, No. 49. Lambard, p. 51. et seq. Coke's 1st Inst. p. 104, and 391. 2d Inst. p. 51. 3d Inst. p. 26. 4th Inst. c. 17. Sir Edward remarks, that no addition can be made to the jurisdiction of any court, without an act of Parliament. Crompton's Jurisdic. of Courts, c. 5. See in Hearne's Discourses of Antiquity, various treatises,—by Camden, Cotton, Thinne, Plott, &c. Hawkins, in his Pleas of the Crown, refers to the stat. of Rich. II. as limiting the jurisdiction of the Constable and Marshall, b. ii. c. 4. "The jurisdiction of the Constable and Marshall," says Sir Mat. Hale, "is 8 Rich. II. c. 2 and 13. c. 5, and not only by

Marshall's Court, was erected, which made such grievous encroachments upon the privileges of the people, that Lord Clarendon pronounces it "a monstrous, usurped jurisdiction;" and, indeed, it was he, then Mr. Hyde, who moved for its abolition, declaring it "a court newly erected, without colour or shadow of law, which took upon itself to fine and imprison the king's subjects, and to give great damages for matters which the law gave no damages for *."

these statutes, but more by the common law is their jurisdiction limited. They are not to meddle with any thing determinable by common law." Hist. of the Common Law, vol. i. p. 52. Pleas of the Crown, vol. i. p. 500. Mr. Hume has, in a note upon his history of Edward IV. referred to Spelman's Glossary, verb. Constab. The account by Spelman is very imperfect, yet he says that the office, which had become grievous to the people, was regulated by the 13th Rich. II.; but that the statute had been disregarded in the patent to Earl Rivers. See Reeves' Hist. of the English Law, vol. iii. p. 196. edit. 1787. Some account is also given of the Admiral's jurisdiction, which was strictly defined. One of the charges against Rich. II. art. 26. was, that, "contrary to the great charter, he had caused divers lusty men to appeal divers old men, upon matters determinable at the common law in the Court Martial, because in that court is no trial but only by battle, whereby the said old men, fearing the sequel of the matter, submitted to his mercy, whom he fined, and ransomed unreasonably." Hayward, p. 201. The only other authority referred to by Mr. Hume, is Sir John Davies' work on impositions—a book written to ingratiate himself with King James; but, however the author prostituted his talents in other respects, there is nothing there to support Mr. Hume's statement. He merely says, "that part of the law of nations whereby the High Constable and Marshall of England do proceed in their courts of war and chievalry, is called the law of the land," p. 9; a point undoubted. Harl. MS. No. 305. Cotton, Jul. t. vi. No. 41, Brit. Mus. This last is a patent by James I. putting the office into commission, and distinctly shows that its powers were limited to questions about coats of arms, &c.

* Clarendon's Life by himself, vol. i. p. 37, (or in Oct. 72,) &c.

Imprisonment by warrant of a Secretary of State, or of the Privy Council.

"There was," continues Mr. Hume, "a grievous punishment very generally inflicted in that age, without any other authority than the warrant of a secretary of state, or of the Privy Council, and that was imprisonment in any jail, and during any time, that the ministers should think proper. In suspicious times, all the jails were full of prisoners of state; and these unhappy victims of public jealousy, were sometimes thrown into dungeons, and loaded with irons, and treated in the most cruel manner, without their being able to obtain any remedy from law. This practice was an indirect way of employing the rack." It is very unfortunate that the learned author has not thought proper to adduce some instances of this atrocious proceeding, and of justice having been denied by courts of law: For the English, regarding imprisonment as torture and civil death, were ever jealous of their personal liberty *, and had provided many statutes besides *magna charta*, to secure themselves from that evil. To such a degree did they carry their apprehensions of any encroachment of prerogative against their personal rights in this respect, that, after the defeat of the Spanish armada, the commons petitioned for leave to bring in a bill of indemnity for the illegal imprisonment of some Catholics on that momentous occasion; and, during Elizabeth's time, as well as during that of her predecessors, the judges liber-

* See the debates on this subject in 1627. Rush. vol. i. Franklyn's Annals. Parl. Hist. Coke's 2d Inst. p. 41; 4th Inst. p. 182.

ated individuals who had been imprisoned by the express command of the sovereign and council. In the 34th of Elizabeth, certain great men, having been offended at the liberation of some prisoners, procured a command to the judges not to proceed; but that venerable body continued to discharge their duty, by setting the prisoners at liberty in the face of this order*; and having been desired to specify in "what cases a person sent to custody by her majesty, or her council, some one or two of them, is to be detained in prison, and not to be delivered by her majesty's court or judges," they gave it as their opinion, (which they delivered in writing to the chancellor and treasurer) "that if any person be committed by her majesty's command, from her person, or by order from the council board, or if any one or two of her council commit one for high treason, such persons so in the cases before committed, may not be delivered without due trial by

* Anderson's Reports, p. 297, *et seq.* At that time a crying grievance existed—that of individuals being confined by order of privy-councillors and noblemen, to gratify resentment, or promote their own unjust schemes; but the judges exerted themselves to put a period to such intolerable oppression, and never failed to release the confined who applied to them. Their exertions, however, were ineffectual, as these wretched men, having been liberated from one prison, were frequently hurried away to some secret place of confinement, and the judges represented the matter to the throne. Mr. Hume (p. 465.) has adduced this as a proof of the despotism of the government; but, surely, with small reason, for it arose from the badness of the police and power of the aristocracy, and the weakness of the executive. If privy councillors had possessed the power of commitment without assigning the cause, the judges could not have interposed.

the law, and judgment of acquittal had. Nevertheless the judges may award the queen's writ to bring the bodies of such persons before them, and, *if upon return thereof, the causes of the commitment be certified to the judges, as it ought to be*, then the judges, in the cases before, ought not to deliver him, but to remand the prisoner to the place from whence he came, which cannot conveniently be done unless notice of the cause in generality or else specially be given to the keeper or goaler that shall have the custody of such a prisoner *." Thus

* I quote from Chief Justice Anderson's Reports, p. 298, as the words differ there a little from the copy in Rushworth and Franklyn, said to have been taken from this judge's reports, then in manuscript. The reader will not be of opinion that Mr. Hume was authorised by these words to say that the judges expressly declared, that a person sent to custody by the queen in her council was not bailable. Indeed the opinion was in vindication of the release of prisoners against an express order from the court; and the same principle was, subsequently, acted upon. See Selden's argument in 1628. Franklyn, p. 267, whole speech, with the cases, &c. from p. 264 to 280. In 1627, Judge Whitelock defended his own conduct and that of his brethren for refusing the release of certain gentlemen imprisoned about loan-money, by saying that they had determined nothing, &c. and, says he, "it appears in Dyer, 2 Eliz. that divers gentlemen being committed, and requiring habeas corpus, some were bailed, others remitted, whereby it appears much is left to the discretion of the judges." This is in support of our text. The judge proceeds to state, that he "never saw nor knew of any record, that upon such a return as this" (a special commitment) "a man was bailed, *the king not first consulted with.*" Id. 249—250. Rush. vol. i. p. 510. The opinion of the judges in the 34th of Elizabeth, had, in the case alluded to, been misrepresented, and Selden produced Chief Justice Anderson's report of it to the House, "which," said he, "will contradict all those apocrypha reports that go upon the case." Frank. p. 250. When the cases in favour of the liberty of the subject, in this respect, were cited in 1628, not a precedent on the other side could be adduced. Rush. vol. i.

the power of the queen and her council to imprison at will was denied, for the cause must be certified, as well as be one which it is the object of government to bring to a trial. The opinion is ill expressed; but it would appear that the words "high treason," as the cause of commitment, applied to all the cases of custody as well as to the last; and it will be observed, that the question put to the judges was not, whether the queen and her council could imprison at pleasure, but in what cases the commitment was good? and that they asserted their right to grant a *habeas corpus*, that the cause might be ascertained. The construction put upon the opinion appears to be fully warranted, not only by the case to which it referred, as well as an after case in that reign, but by the use which was made of it in the year 1627; for Coke and Selden quoted it as decisive against the right to commit without assigning the cause, then claimed by the crown, and the lawyers, on the other side, did not oppose what was said, while they could not adduce a single precedent in support of the principle for which they had contended.

Had such a power been exercised by Elizabeth, it would have been such a flagrant violation of law

p. 535. Selden chiefly managed the argument as to the book cases, but Sir Edward Coke also spoke upon the subject, and, after arguing the point on legal principles, he took occasion to add four book cases and authorities all in point, saying, "that if the learned counsel on the other side could produce but one against the liberties so pat and pertinent, oh how they could hug and cull it." Ib. See also Harl. MS. Brit. Mus. No. 37. Coke's 2d Inst. 54, 615. 4 Inst. p. 71, 182.

as could not be too soon repressed; and submission to it could only have been attributed to the extraordinary situation in which she was placed.

The use of torture.

"But," says Mr. Hume, "the rack itself, though not admitted in the ordinary administration of justice, was frequently used, upon any suspicion, by authority of a warrant from a secretary of state." Torture has, at all times, been abhorrent to the feelings of Englishmen, and unknown to the laws of that country. Sir John Fortescue who, as we formerly observed, sat long as chief justice under Henry VI. and was afterwards nominated chancellor, founds his panegyric on the English laws, partly upon their being uncontaminated with this horrid practice, a practice which, he justly remarked, ought not to be accounted law, but rather the high way to the devil, but which was yet common in France and other countries where the civil code obtained *. Sir Thomas Smith, who held the office of secretary of state both under Edward VI. and Elizabeth, and who wrote his work, with much the same view as Fortescue—to contrast the free government of his native country with that of surrounding states—likewise expresses abhorrence at such a practice, and congratulates England on its being free from it †. Harrison, a popular writer of Elizabeth's time, takes the same view ‡. Sir Edward Coke expresses his abhorrence of torture

* De Laud. Leg. Ang. c. 46.

† Commonwealth, b. ii. c. 27.

‡ Harrison on this point, follows Sir Thomas Smith very closely P. 184. b. ii. c. 11.

in the strongest terms, declaring that there is no law to warrant it. "And," says he, "the poet in describing the iniquity of Radamanthus, that cruel judge of Hell, saith,

*Castigatque, auditque dolos, subigitque fateri.*

First, he punished before he heard, and when he had heard his denial, he compelled the party accused, by torture, to confess it." He then shews that this is not only against the law of God, but against Magna Charta; and proceeds thus: "Accordingly, all the said ancient authors are against any pain or torment to be put or *inflicted* upon the prisoner before attainder, nor after attainder, but according to the judgment. And there is no one opinion in our books, or judicial record (that we have seen and remember) for the maintenance of tortures, torments," &c*. "The trial by rack," says Blackstone, "is utterly unknown to the law of England; though once, when the Dukes of Exeter and Suffolk, and other ministers of Henry VI. had laid a design to introduce the civil law into this kingdom, as the rule of government, for a beginning thereof, they erected a rack for torture; which was called, in derision, the Duke of Exeter's daughter, and still remains in the Tower of London, where it was occasionally used as an engine of state, not of law, more than once in the reign of Queen Elizabeth†." Nothing can

* 3d Inst. p. 35.

† Blackstone's Commentaries, vol. iv. p. 320.

justify a resort to any thing so horrid; but the conspiracies of Papists were endless, as well as of the most alarming kind, and men, under the influence of fear, are generally cruel, while the party who support administration, are too apt not to condemn an illegal act which strikes at enemies of whom they live in constant alarm. During Elizabeth's reign, some Catholics, believed to be engaged in the deepest treason, were put to the rack to extort confession; but the circumstance raised such a clamour against the government, that, in 1583, Burghley himself wrote and published a vindication of it, in which he states that the Popish party had exaggerated the matter beyond all bounds; that very few had been racked, and these very gently; and "that none of them had bene put to the racke or torture, no not for the matters of treson, or partnership of treason, or such like, but where it was first known and evidently probable by former detections, confessions, and otherwise, that the party so racked was guylty, and did knowe, and coulde deliver trueth of the things wherewith he was charged; so as it was first assured, that no innocent was, at any time, tormented, and the racke was never used to wring out confessions at adventure upon uncertainties, in which doing, it might bee possible that an innocent in that case might have bene racked *." The excuse is a sorry one,

* Scott's Somers' Tracts, vol. i. p. 211. The paper is entitled, "A Declaration of the favourable Dealing of her Majestie's Commissioners, appointed for the examination of certaine Traytours, and of Tortures unjustly reported to be done upon them for matter of Religion, 1583, by Lord Burghley." P. 209 *et seq.*

but it proves the real feelings of the age; and, though the period of publication was a critical juncture, Elizabeth herself ordered the practice to be forborn*. It was again employed after the Revolution, in the time of William III. to extort confession from a state delinquent†; yet who will say that it was not at that time as repugnant to the feelings of Englishmen as to their laws?

"Even the council in the marches of Wales was empowered, by their very commission, to make use of torture whenever they thought proper." Now, with regard to this, it is only necessary to remark, that this commission was issued by Queen Mary‡, a princess whose reign ought not to be quoted; that, at all events, Wales did not fully enjoy the administration of the English laws, as by 34 Henry VIII. cap. 26. the president and council were empowered to execute justice according to their discretion ||; and that, such was the state of society in that principality, even in the time of Hudson, who wrote either towards the close of James's reign or in that of Charles, that there was

* Camden, p. 497. Books were published about this time, in which the Queen's gentlewomen were exhorted to imitate against her the conduct of Judith to Holofernes. Ibid. Elizabeth always declared against forcing the consciences of men. Id. p. 487. The Popish priests held, that whatsoever was done by the Queen's authority after the publication of the bull by Pius V. was null, both by the laws of God and man, and that there was no lawful magistrate in England. Ibid.

† Scott's Somers' Tracts, vol. i. p. 209. Note prefixed by the Editor.

‡ Haynes, p. 196. The Instructions were issued in 1553.

|| 4th Inst. p. 242.

no possibility of obtaining a regular conviction there of any man of a certain rank *.

"There cannot be," continues the historian, "a stronger proof how lightly the rack was employed, than the following story told by Lord Bacon. We shall give it in his own words. "The Queen was mightily incensed against Hayward, on account of a book dedicated to Lord Essex, being a story of the first year of Henry IV. thinking it a seditious preclude to put into the people's heads boldness and faction. She said she had an opinion that there was treason in it, and asked me if I could not find any places in it that might be drawn within the case of treason? Whereunto I answered, For treason, sure I found none; but for felony very many: And when her majesty hastily asked me, wherein? I told her, the author had committed very apparent theft; for he had taken most of the sentences of Cornelius Tacitus, and translated them into English, and put them into his text. And another time, when the Queen could not be persuaded that it was his writing whose name was to it, but that it had some more mischievous author, and said, with great indignation, that she would have him racked to produce his author. I replied, nay, madam, he is a doctor, never rack his person, but rack his style: Let him have pen, ink, and paper, and help of books, and be enjoined to continue the story where it breaketh off, and I will undertake, by collating

* Hudson, p. 14.

the styles, to judge whether he were the author or not." Thus, had it not been for Bacon's humanity, or rather his wit, this author, a man of letters, had been put to the rack for a most innocent performance. His real offence was, dedicating a book to that munificent patron of the learned, the Earl of Essex, at a time when that nobleman lay under her majesty's displeasure." Essex, once the great favourite of Elizabeth, had fallen into disgrace, and from his popularity had become an object of jealousy. At this juncture, Doctor, afterwards Sir John, Hayward, published his history of the early part of the reign of Henry IV. in which he treats almost exclusively of the misconduct and deposition of Richard II. uttering sentiments on so delicate a point, bold enough to startle princes, and dedicated the work to Essex, whom he addressed in these words: "*magnus siquidem es, et presenti judicio et futuri temporis expectatione* *." No wonder that Elizabeth was of-

* Mr. Hume says, in a note, "To our apprehension, Hayward's book seems rather to have a contrary tendency. For he has preserved the famous speech of the bishop of Carlisle, which contains, in the most express terms, the doctrine of passive obedience. But Queen Elizabeth was very difficult to please on this head." I conclude from this, that the learned author had never read Hayward's work; for the sentiments are of a very different description from what he supposed. It is true that the bishop of Carlisle's speech is preserved, and the history would have been incomplete without it; nay, it is also true, that Hayward appears to condemn the deposing of Richard. But the boldest opinions are to be met with in almost every page; and, since Mr. Hume has alluded to the bishop of Carlisle's speech, of which he himself gives a high character in v. iii. page 43, we shall give an extract from another in the same production; being part of Thomas Arundel, archbishop of Canter-

fended; and, though Mr. Hume has ascribed her resentment solely to the dedication, all cotemporary authorities attribute it to the sentiments as well as to the dedication, which was particularly offensive, from the ambitious designs imputed to Essex, and from another work, questioning her title, having been dedicated to the same nobleman *. It must be admitted, however, that there is a wide difference between the use, and the execution, of a violent threat, pronounced in a moment of irritation, and therefore much

bury's, when he instigated the Duke of Hereford to aspire to the crown. "Our ancestors lived in the highest pitch and perfection of liberty, but we of servility, being in the nature not of subjects, but of abjects and flat slaves." After depicting the tyranny of Richard, he says, "the attainment of the kingdom must now be a sanctuary and repose for us both. The like examples are not rare (as you affirm) not long since put in practice, nor far hence to be fetched. The kings of Denmark and of Swedeland are oftentimes banished by their subjects, oftentimes imprisoned, and put to their fine. The princes of Germany, about a hundred years past, deposed Adolphus their emperor, and are now in hand to depose their emperor Winceslaus. The earl of Flanders was, a while since, driven out of his dominions by his own people, for usurping greater power than appertained to his estate. The ancient Britains chased away their own king Carecius, for the lewdness of his life and cruelty of his rule. In the time of the Saxon heptarchy, Bernredus, king of Mercia, for his pride and stoutness towards his people, was by them deposed. Likewise Aldredus and Ethelbertus, kings of Northumberland, were, for their disorders, expelled by their subjects. Since the victory of the Normans, the Lords endeavoured to expell King Henry III. but they were not able. Yet were they able to depose king Edward the Second, and to constitute his young son Edward king in his stead. These are not all, and yet enough to clear this action of rareness in other countries, and novelty in ours. The difficulty indeed is somewhat, because the excellency is great." P. 142, 143.

* Birch's Memoirs, vol. i. p. 313. See also vol. ii. p. 439—447.

weight cannot be given to her threat of putting Hayward to the rack. Indeed, it appears that she did not soon drop her resentment *; and therefore we cannot admit that her rage was diverted by Bacon's wit.

* Mr. Hume farther remarks, "that the Queen's menace of trying and punishing Hayward for treason could easily have been executed, let his work have been ever so innocent. While so many terrors hung over the people, no jury durst have acquitted a man, when the court was resolved to have him condemned." He then makes a remark about witnesses not being confronted with the prisoner; declares that scarcely an instance occurred during all these reigns of the sovereign or the ministers having been disappointed in the issue of a prosecution, and proceeds thus: "Timid juries, and judges, who held their offices during pleasure, never failed to second all the views of the crown. And as the practice was anciently common, of fining, imprisoning, or otherwise punishing the jurors, merely at the discretion of the court, for finding a verdict contrary to the direction of these dependent judges; it is obvious that juries were then no manner of security to the liberty of the subject." In this there is some truth mixed up

† Camden's Annal. p. 862. It was held by the lawyers, that the work was written with the object of encouraging the people to depose the Queen. Sir G. Merrick, one of Essex's party, was, in 1601, charged amongst other things, certainly overt acts of treason, with having caused an obsolete tragedy of the deposing of Richard II. to be publicly acted at his own charge, for the entertainment of the conspirators. Ib.

with much gratuitous assumption. In the first place, the Queen made no menace of trying Hayward for treason, though she evinced great anxiety to have the case brought within the compass of treason—a fact, which goes of itself far to negative all the historian's unqualified account of the state of the government, particularly about the judges, who, by the way, did not, as we have already observed, hold their places during pleasure, but during good behaviour. The juries, too, though occasionally summoned into the Star-Chamber for their verdicts, were not reduced to such a deplorable condition as the historian imagined. But, in the next place, we may observe that the judges displayed an integrity in Elizabeth's time, which forms a strong contrast with the conduct of the sworn guardians of the law during the two succeeding reigns. Elizabeth's judges put a check upon the proceedings of the High Commission, and, in spite of the interest which was used to have the individual condemned who killed the pursuivant that attempted to enter his house by virtue of a warrant from the commissioners, they dismissed him from the bar, as having only vindicated the rights of an Englishman. They asserted the privileges of the people in regard to illegal imprisonments, and they declined to sanction, by their opinion, an imposition laid upon merchandise without an act of parliament. The following circumstance, too, is in point: One Bloss had affirmed that King Edward was alive, and that Elizabeth was not only

married to the Earl of Leicester, but had born four children to that nobleman. Ministers were eager to chastise him; but having found that there was no statute which authorised his punishment, they instantly set him at liberty *.

Impressments.

"The power of pressing both for sea and land service," continues the historian, "and obliging any person to accept of any office, however mean or unfit for him, was another prerogative totally incompatible with freedom. Osborne gives the following account of Elizabeth's method of employing this prerogative: "In case she found any likely to interrupt her occassions, she did seasonably prevent him by a chargable employment abroad, or putting him upon some service at home, least grateful to the people; contrary to a false maxim since practised with far worse success, by such princes as thought it better husbandry to buy off enemies than reward friends."—"The practice," says Mr. Hume, "with which Osborne reproaches the two immediate successors of Elizabeth, proceeded partly from the extreme difficulty of their situation, partly from the greater lenity of their dispositions." Legally no one could be sent out of the kingdom against his will †; and though every man was bound by law to provide himself with arms according to his quality, for the public defence, he was not bound, except in a case of invasion, to go beyond his own shire ‡. But every thing is

* Annals, vol. ii. p. 240, 241.

† Inst. p. 47, 48.

‡ III. St. 2. c. 6. 4 Henry IV. c. 13. Prynne's Humble against the Tax of Ship-money, p. 11.

liable to abuse, people of influence in the state being too apt to overlook oppression which does not touch themselves; and labourers and artificers were pressed for sea as well as land service, and sent out of the kingdom*; but no instance, so far as I know, is

* In ancient times, "knights or gentlemen expert in war, and of great revenues and livelihood in their country, covenanted with the king to serve him in his war, for such a time, with such a number of men: and the soldiers made their covenant with their leaders or masters, and then they were mustered before the king's commissioners, and entered of record before them; and that was certified into the Exchequer, and thereupon they took their wages of the king, as it appeareth by many precedents of the exchequer, and may be gathered by the preamble and body of the act, (5 Richard II. c. 11.) &c." Coke's 3d Inst. p. 86. c. 26. This also appears by 1 Henry VI. c. 5. in regard to the soldiers of Henry V. by 18 Henry VI. c. 18. and 19. 7 Henry VII. c. 1. 3 Henry VIII. c. 5. This fell into desuetude, and pressing commenced. The fact appears to have been, that anciently men were raised by the influence of the aristocracy; and that this influence, together with the number of the unemployed, gave subsequently rise to impressments, which were never legal. Sir Edward Coke informs us, (Ib.) that those only could be lawfully conveyed out of the kingdom, as soldiers, who received the king's press-money, which I presume was a bounty for such service. But it is plain, that after men were enrolled, they would require very little inducement to go abroad.

Mr. Hume says, that "when any levies were made for Ireland, France, or the low countries, the Queen obliged the counties to levy the soldiers, to arm and clothe them, and carry them to the sea-ports at their own charge." I am not prepared to contradict this: but I wish that the learned writer had given his authorities for such an assertion, for I am not at present aware of the existence of such a practice in Elizabeth's reign, and, if such there were, it was directly against law. Such a thing had been done in the time of Edward II. a prince dethroned for alleged misgovernment; but by 1 Edward III. Stat. 2. c. 7. it was repressed. This statute was confirmed by 4 Henry IV. c. 13. The city of London in 1558 levied ten thousand men, whom they armed and clothed; and they afterwards likewise raised another thousand: but these appear to have been voluntary [illegible], in

adduced, of individuals of higher rank having been impressed under the Tudors, except the famous one of Alderman Read, in the time of Henry VIII., for refusing a benevolence—an act generally condemned as tyrannical. Had such cases occurred, however, under Elizabeth, as the persons must have been men of note to interrupt her occasions, they would, doubtless, have been handed down to us.—With regard to the assertion of Osborne *, unvouched by contemporary, or any authority, it is little to be regarded. A writer of the present age, of no great ability like Osborne, who should make a general assertion of what had happened fifty or a hundred years back, would not be thought entitled to much credit; and, luckily, the accuracy of this author, in regard to Elizabeth's reign, can be brought to the test. In some sentences immediately preceding the passage quoted by Mr. Hume, Osborne says, that Elizabeth called parliaments often, and that "it was not the guise of those times to dissolve them in discontent, but to adjourne them in love." "And," says he, "it is no less remarkable, that, in so long a reign, she was never forced, as I have heard, to make use of her negative power, but had still

the same manner as their fitting out of ships against the armada was. Maitland's Hist. p. 273. *et seq.*

At the time of the northern rebellion *too, the shires* raised men. Haynes. But then invasion was apprehended, and in the time of rebellion, all the Protestant party were too zealous to stand upon legal rights.

* Osborne died in 1659. He was originally a courtier in the time of James I. and Charles; he afterwards became a parliament-man, but rose to no distinction.

such a party in the House of Lords as were able to save her from that trouble *." Now, it may be observed, that this alleged good correspondence with her parliaments, is not altogether consentaneous to the idea of her having sent leading men, from whom she dreaded opposition, upon expensive employments abroad; but the statement is incorrect, for, on one occasion, she sharply rebuked the commons on dissolving them. And with regard to her never having been forced to make use of her negative power, it is only necessary to state, that, in the 39th of her reign, she refused no less than forty-eight several bills which had passed both houses †. But it is indeed extraordinary to find both Osborne and Hume giving so different a character to the government of Elizabeth's two next successors, (Osborne's may, partly, be ascribed to the general indignation excited by the favour shewn to Wentworth, afterwards Earl of Strafford, for becoming a creature of the court,) since it could not be unknown to them, that, in the year 1621, some of the most distinguished members of the commons were sent abroad by James on the most frivolous pretences, because they discharged their duty in parliament; that, in the year 1623, a citizen of London was, by the same monarch, ordered to carry a dispatch to Ireland, because he refused to comply with a demand of a benevolence, a species of imposition never attempted by Elizabeth ‡;

* Osborne, p. 389, and 391.

† D'Ewes, p. 486.

‡ Rush. vol. i.

and that Charles I. carried his tyranny in this respect to the most odious height.

The historian has justly observed, that men of inferior rank often abused the power of pressing, as officers frequently exacted money for freeing persons from the service. But, however great the grievance was, and it, undoubtedly, was an enormous one, it may fairly be questioned whether it ought not rather to be ascribed to the state of society, than to the uncontrolled power of the crown. The only instance given by Mr. Hume, proves the readiness of the Queen to afford redress to the sufferers the instant the fact reached her ears.

Forced loans and benevolences are, by Mr. Hume, numbered amongst the arbitrary engines of government possessed by Elizabeth, though that princess never attempted the latter illegal mode of raising money. Forced loans were as directly against the principles of the constitution as any tax without the assent of the legislature. But the evil could not be so easily repressed, since, while the request of a prince, especially in disorderly times, is too apt to degenerate into a demand, the illegality of the measure was sheltered under that pretext; and people, in general, were not likely to dispute the request to lend small sums for a short time, though they lost the interest upon the ground then current, and established by law, that it was unjust to take any thing for the use of barren money. The lender, however, could not recover his money by any legal process, and a dishonourable prince might defraud

Forced loans.

him: Accordingly, this formed one of the charges against Richard II., and Parliament *generously* liberated Henry VIII. from repayment of his loans, which however might be borrowed at interest. Elizabeth frequently borrowed large sums of money at the enormous rate of 14 per cent.; and, as while she borrowed at such a charge, she appears to have applied only twice (Mr. Hume says *often*) to her subjects, on the most momentous occasions too, and for a short period, for loans in an irregular way, we may safely conclude that, had it been carried farther, the temper of the kingdom could not have submitted to the grievance. The first occasion on which Elizabeth resorted to this mode of raising money, was upon the northern rebellion: And it will be perceived from the warrant, a copy of which is to be found in Haynes' collection, that it is in the form of a request, and that the lenders are assured of repayment within twelve months. The measure was justified on the principle of necessity, as treasure "now withowt Parliament, cannot be had but by way of lone," and it was said that "the Prince is not here the borrower, but God and our naturall cuntry." The influence of the crown, in the country, was, at this time, very great, in consequence of the number that had obtained a share of the church lands; and the request does not appear to have encountered opposition there amongst the higher ranks, while, says Mr. Bertie, in a letter to Secretary Cecil, "the perverse in this" (the lower) "rancke, shall be, by shame, constreyned to contribute with their

goods *." At the year's end, the Queen was not, owing to the great expense incurred, in a condition to repay the money, and therefore, she thus instructed the collectors, "to use all good meanes, either by your letters, or by your conference with the partyes that have so lent to us any monny, as for the reasons above sayd, and at our request they will be content to forbeare the demand of their monny from the daye the same is, or shall be due, for the space of seven monthes; at which tyme, or before, you may assure to them an undoubted payement, for so we have fully determyned by advise of our counsell to perform the same." She concludes by saying, that, "as the lenders had given her cause to think well of them by their readiness to lend, she hoped they would give her reason to increase her good opinion, by forbearing their demand according to her request †." This was the identical loan which gave occasion to the historian for the following statement: "Their remains a proposal made by Lord Burleigh for levying a general loan on the people, equivalent to a subsidy; a scheme which would have laid the burthen more equally, but which was, in different words, a taxation imposed without consent of parliament." Now, there is no farther proposal in the case, than an order for letters of privy seal. Yet the elegant author referred to, compares this, *which he says was "proposed without any visible necessity,"* to the imposition of a sixth part of men's goods, attempted by Henry VIII., which, enor-

* Haynes, p. 518, 519. † Murden, p. 181.

mous in itself, was not even to be repaid, and to the after exactions of Charles I. who was, says the historian, "enraged by ill usage from his parliament." But what sets this in a different light is, that, though the Queen succeeded in the counties, where there was less public spirit, and greater court influence, she failed in the metropolis; for the citizens refused to lend, and she borrowed £16,000, at the rate of six per cent. for six months, or 12 per cent. per annum, granting at the same time a discharge from the statute of usury. At the end of the six months she was unable to refund the money, and prolonged the term of payment for other six months, with six per cent. more, besides brokage. It is curious too, that Mr. Hume elsewhere states the fact of her having borrowed from the city, through the influence of Sir Thomas Gresham, and yet that he totally overlooked the date of the loan, as well as the refutation which it carried with it of his own statement, since, if Elizabeth could have borrowed without interest, she would not have paid for the loan at so enormous a rate *. The other loan raised by

* Stow's Survey by Strype, vol. i. p. 283. The first writs to the citizens were for twelve months, and I presume without interest, as there is no mention of it. Haynes. Stow, while he specifies the rate of interest on the loan of 1569, does not distinctly give us to understand that interest was not paid in 1588; but from the opposition the loan met with I suspect it. In 1589 she borrowed £15,000 at ten per cent., but that could not in any view be called compulsory. Stow gives a list of loans by the city. The first he mentions was in Edward III. when he had resolved on an expedition to France, and had obtained a tax to enable him to undertake the expedition. The citizens lent 20,000 marks, which were to be repaid out of

Elizabeth, was immediately after the defeat of the Spanish armada, when vigorous preparations were still deemed requisite against any after attempt: then it was that the mayor of London officiously imprisoned some citizens for refusing to lend *. But the season was fit for an illegal proceeding: From the extraordinary charges to which the government had been put, and the treasure still requisite, necessity seemed to justify such a loan, while the victorious triumph over the Spaniards threw the irregularity of the means employed to compass the object, into the shade.

Benevolences.

"The demand of benevolence," says Mr. Hume, "was another invention of that age for taxing the people. This practice was so little conceived to be irregular, that the Commons in 1585, offered the queen a benevolence, which she very generously refused, as having, at that time, no occasion for money." By the fundamental principle of the constitution, confirmed by Magna Charta, &c. money could not at any time, be exacted from the people without an act of

parliamentary grant. In the year 1644, Henry VIII. borrowed from citizens £21,263, 6s. 8d. upon lands mortgaged to them. The principal lenders were knights, and the rest were knighted for their loyalty. In 1551 the city became bound with Edward VI. for repayment of a loan from some bankers at Antwerp. P. 281, 282. The next was that mentioned in 1569. All this is to be found in the very place referred by Mr. Hume, when (p. 476.) he tells us that Sir Thomas Gresham engaged the company of merchant-adventurers to grant a loan. Stow says that divers merchants and aldermen were lenders.

Elizabeth also, on extraordinary emergencies, lent money to the citizens. Ib.

* Camden, p. 632.

the legislature: but Edward IV. taking advantage of the particular state of affairs, two years after the battle of Tewkesbury, and just on the eve of a war with France*, when the kingdom had been rent with civil dissension, and his power, upon the reduction of his adversaries, was great, instead of summoning a parliament from which he might ask a benevolence, (from time immemorial, every legislative grant has passed under that name,) directly applied to the people, pretending that he demanded nothing of right, but appealed to their generosity. The people, however, considered his request as approaching to a demand†, and resented it so deeply, that the device was urged by the Duke of Buckingham, in his discourse to the citizens at Guildhall, as a proof of the oppression practised by Edward, and as a reason for not permiting respect for that prince's memory, to prevent their setting aside the succession of his children‡. Richard III. himself, with both houses of parliament, by statute 1. c. 2. of that prince, stigmatized it as an act of injustice and oppression, and declared it to be illegal, in the strongest terms of reprobation. Henry VII. whose situation in regard to the influence of the crown, has been

* Habington in Ken. p 461.

† In the Croyland Chronicle it is said—"*Inducta est nova et inaudita* impositio muneris, ut per benevolentiam quilibet daret id quod vellet, imo verius id quod nollet." Hist. Croylandensis Continuatio, p. 558. We are informed by this writer, that Richard violated the statute himself, by exacting a benevolence, which the people called, a malevolence. Id. p. 571. But the fact is not mentioned by other writers. Even Bacon tells us that the benevolence was devised by Edward IV. Hist. p. 602.

‡ See More's Hist in Ken. p. 498. Halle, f. 20. Holinshed, p. 758.

already described, had, in 1492, resolved upon something of the kind, leviable at a certain rate, but the people resisted it till Parliament lent its authority to the particular tax proposed *. In 1505, he repeated the measure successfully without the interposition of the legislature †. His son and successor, instigated, as it is alleged, by Cardinal Wolsey, attempted to levy money without an act of parliament; but violent symptoms of rebellion obliged him to recal the warrants and disavow the measure, when he declared that he meant only to appeal to their good-will, not to ask any thing of right ‡. In the year 1546, when the Reformation had so greatly extended the influence of the crown, Henry a second time resorted to this unlawful way of raising money; but, though he sent Alderman Read to Scotland, and practised severities against others for refusing, it is extraordinary, — and the fact has escaped historians—that he was obliged to apply to Parliament for its authority to levy the sums proposed. As a statute was passed at his request, the demand ceased to be irregular §.

* See St. 11. Henry VII. c. 10. † Bacon's Hist. p. 602, 631.

‡ Herbert, p. 66, 67. Holinshed, p. 891. Halle, fol. 138. This cotemporary writer tells us that people "said, if men should give their goodes by a commission, then wer it worse than the taxes of Fraunce, and so England should be bond and not free." Yet Mr. Hume could not discover any proof of the English being sensible of any superiority in their government. Halle is supposed to have been born about the last year of the fifteenth century. He was a lawyer, became a serjeant, and was likewise a member of Parliament. He died in 1548. Chalmers' Biog. Dict.

§ The commission for the benevolence is dated the 5th of January 1546. Rym. Fœd. vol. xv. p. 84. and the statute was passed the same year, 37 Hen. VIII. c. 25. § 23 and 24. printed in the late publication of Statutes of the realm, vol. III. p. 625.

Nothing of the kind was ever afterwards attempted by the House of Tudor. Thus, anterior to the dynasty of the Stuarts, there had been only five attempts at benevolence, of which two obtained the authority of Parliament, and consequently became legal taxes.

As on this subject—of real importance to the political history of the country—Mr. Hume has successfully led public opinion, the reader will deem a strict scrutiny of that celebrated writer's statements no trespass upon his patience. In treating of the benevolence levied by Edward IV. he says, "but, as the king deemed these sums unequal to the undertaking, he attempted to levy money by way of benevolence, a kind of exaction, which, except during the reigns of Henry III. and Richard II. *had not been much practised in former times*, and which, though the consent of the parties was pretended to be gained, could not be deemed entirely voluntary." In the apparent support of this statement, there is an array of references, whence the natural conclusion is, either that the whole of it was warranted by them, or that he had alluded to the practice of former times, from having himself adduced instances of it in the preceding parts of his history. The conclusion is, in both respects, erroneous. All the writers, with the exception of Fabian, and his language likewise implies it, pronounce the benevolence by Edward IV. a new device, in the most direct and explicit terms. No instance is insinuated by the elegant author himself against Richard II. in his history of that king; and, though

in his history of Henry III., it is said that "Henry demanded benevolences, or pretended voluntary contributions from the nobility and prelates," the assertion derives little support from the only authority to which he refers, or from any other. Henry's long reign was full of civil dissention, and marked with many violations of public rights which he was obliged to acknowledge, and solemnly to swear never to repeat *. He was guilty of extortion, not only from the Jews, who appear to have been thought lawful prey, but from the citizens of London, whose pardon afterwards he was forced to beg with tears in his eyes †. It is even alleged, that some of his household were free-booters, and that he shared in the spoil ‡. Having reduced himself to great straits, and disposed even of his plate and jewels §, he summoned a parliament; but that assembly, far from relieving his wants, assailed him as usual with the most bitter reproaches: Disappointed in his hopes of procuring money from them collectively, he endeavoured to obtain it by applying to them individually—promising each a return of favour, pleading his debts, and even feigning that he meant to make war with France: But his request was received with every mark of contempt and scorn ‖. Turning from the barons, he

* M. Paris. Cotton's Short View. Daniel in Ken. Henry. vol. vii. b. iv. ch. 1.

† M. Paris, p. 657, 670.

‡ Henry, vol. vii. p. 18.

§ M. Paris, p. 650.

‖ Id p. 657.

applied to the ecclesiastics, to whom he used the miserable whine of a mendicant, declaring that it would be greater charity to assist him than the wretch who begs from door to door. "Asserens majorem eleemosynam fore sibi juvamen conferre pecuniare quam alicui ostiatim mendicanti." But, with the exception of two abbots, he was not more successful with that body *.—In this part of Mr. Hume's work, as elsewhere, we encounter bold assertion. He roundly states that this and other practices were uniformly continued by Henry's successors †.

In another place ‡, he argues that the legislative enactment which empowered Henry VII. to levy *one* benevolence, indirectly established the general principle in favour of the crown. But, with equal justice may it be said, that a statute which imposes one tax for the public exigencies, implies a power in the sovereign to assess the people at discretion. The statute of Richard III. was not abrogated by that in favour of Henry VII., and the existence of the latter fully imports the understanding of both king and people, that money could not be legally raised in this way any more than by an ordinary subsidy, without the intervention of Parliament. Mr. Hume's view has however the merit of originality. Wolsey contended that Henry VIII. was not bound by the statute of Richard III., because it was passed under a usur-

* M. Paris, p. 658. Daniel in Ken. p. 179.
† Hist. vol. ii. p. 165, 166.
‡ Vol. iii.

pation; yet, though a pretext for injustice was eagerly hunted after, the ingenuity of Henry's adviser never started such a plea: Nor were the Stuart family more successful *.

"The Commons" *(his own authority calls it the Parliament,)* "in 1585," says Mr. Hume, offered Elizabeth a benevolence, which proves that it was

* Mr. Hume has, with more plausibility, quoted a passage from Cotton's Abridgement in regard to loans; that, in the 2d of Richard II. it was enacted that, when a loan was demanded, "such as have *reasonable* excuse for not lending may there be received without farther summons, travail, or grief." "By this law," says Mr. Hume, "the king's prerogative of exacting loans was ratified, and what ought to be deemed a *reasonable* excuse was still left in his own breast to determine:" but had he attended to what occurred immediately after, (see Records, p. 193—194,) he would have discovered his mistake of the meaning. For *parliament* endeavoured to procure a loan in the fifth of that prince from the merchants; but they refused, and it was not pretended that there was any law to compel them. This might have led the historian to consult the full rolls of parliament as printed in 1767 by order of the House of Lords; and there he would have discovered that, in the 25th of Edward III. loans were ordered to be repaid, and it was enacted that none should be compelled to lend "*quar ceo est contre reson et la fraunchise de la terre.*" Rot. Par. vol. ii. p. 239. No. 16. That, even in the very case referred to, it is said that letters of privy seal had been issued, and that those who refused to lend had been threatened, and commanded to appear before the council, "a grande damage et affraye des ditz povres Cons. et enselandre du roi, et encontre la loye de la terre." Vol. iii. p. 62. No. 30. 2d Richard II. Now, since compulsatory means were reprobated as against the law of the land, and an excuse was to be received without farther summons, travail, or grief, it is perfectly evident that it remained with those applied to, not with the king, to determine whether the excuse was reasonable, for the sovereign had no way to ascertain whether it were so or not. Had the enactment been capable of Mr. Hume's construction, it would have been used by the crown not only three years afterwards, but at a later period—to justify a measure condemned as illegal·

little conceived to be irregular†." Now, as the grand, the only objection to what *in common speech* is termed a benevolence, arises from it's being a real extortion under the pretext of a voluntary gift (for, were the practice to prevail, individuals would be exposed naked to the influence and indignation of the crown,) it is utterly impossible to conceive upon what ground a legislative grant, pregnant with no injustice to any particular class of the community, could, under one name, be more repugnant to the theory or spirit of the constitution than under another. Against such a species of benevolence, the law of Richard III. neither was, nor could be, directed; for parliament ever continues to be invested with the same power, and its acts must, therefore, be equipollent. But had this elegant author bestowed a little more investigation on the subject, he would have discovered that the word benevolence had, in parliamentary, and common language, totally different meanings, importing in the first, an ordinary legislative supply to the throne, and in the other, a species of extortion at the mere will of the prince. So deeply rooted is the first meaning, that, from time im-

By the way, we may be pardoned for a single word about what is called Cotton's Abridgment. It was published by Prynne in 1657, and is alleged to have been made, not by Cotton, but by Bowyer, keeper of the Records, about the end of Elizabeth's reign. It is valuable, but not complete, nor always accurate. See preface by Raithby to the first volume of his edition of the Statutes. P. 23.

† Hist. vol. v. p. 460.

memorial, the assent of the sovereign to a money bill has been thus expressed in Norman French: "Le Roy, or, La Roigne remercie ses loyaulx subjects, accepte lour benevolence, et aussi le veult." "The King, or Queen, thanks his, or her, loyal subjects, and wills it to be so *." Let us now take the passage founded on by Mr. Hume, which is part of a speech by Sir Robert Cecil, in the year 1592 or 3, and we shall probably perceive small cause to infer that there had been any irregular offer of money. A very large supply, according to the opinion of those times, had been moved for; and many contended that it would form a precedent for future grants, prejudicial to the nation. Sir R. Cecil, then Secretary of State, in order to remove this apprehension, observed, that "In her Majesty's time, it was not to be feared that this precedent would ever do them harm, for her Majesty would never accept any thing that was given unwillingly. Nay, in the *parliament* the twenty-seventh of her reign, she refused a benevolence offered her, because she had no need of it, and would not charge her people †." Now on a strict examination of the journals for the year 1585, nothing of this kind appears; and the only occasion in which she declined an offer of money, was in the ninth of her reign, when she remitted

* Blackstone's Commentaries, vol. i. p. 181. D'Ewes' Journals at the end of every Session, House of Lords.

† D'Ewes' Journals, p. 404.

the third payment of a subsidy *tendered by bill in ordinary form*, alleging that she had no need of money at that time, and that it was better in her subjects' pockets than her own, though her real motive was to evade a condition of marriage on her part, which the gift imported *. To this then must we presume that Sir Robert referred, and we do it with the greater confidence, because we are informed by the editor of the Journals, that the speech founded on by Mr. Hume was extracted, not from the original journals of the house, but from an anonymous journal, (taken by some member,) which he had in his possession, and it is easy to conceive that an error of a date may have crept into it. But perhaps the word benevolence may still startle the reader, since there may reasonably be supposed a difference betwixt a formal and unvaried response of the sovereign, and the common language of the two houses of Parliament. To remove this impression, we may observe, that upon a strict investigation of D'Ewes' Journals, from beginning to end, we have discovered, that the word benevolence, employed to denote a regular legislative grant, occurs not seldomer that twenty times †. Nay, in reference to that very sub-

* D'Ewes' Journals, p. 131. Cambden in Ken. p. 400.

† In the first year of her reign, Sir Thomas Gargrave, Speaker of the House of Commons, in his speech to the throne at the conclusion of the session, "desired in the name of the house that her Majesty would be pleased to take in good part the *free* gift of her subjects, who, in token of their love and zeal to her Majesty, did *with one assent*

sidy which Cecil was strenuously endeavouring to obtain, and to which his speech related—the word benevolence is used four times, once by the secretary himself *. Nor should the double meaning of

offer unto her, not only the *subsidy* of tonage and poundage, but likewise *one subsidy and two-fifteenths and tenths.*" D'Ewes' Journal, p. 31. Sir N. Bacon, then lord keeper, returned warm thanks at the desire of her Majesty, and calls the grant a liberality and benevolence—using the latter word to denote supply five times. P. 32. In the fifth of the Queen, the same lord keeper again styles the supply a liberality and benevolence, and, as he had done before, talks of the Commons' benevolent minds, p. 75. In the 13th of the Queen, the same lord keeper, on returning thanks for the subsidy, calls it a benevolence seven times, p. 151. talks of their benevolent minds, &c. In these instances the word is used without the least formality. In the 18th, he speaks "of the grant of a subsidy," and styles it a benevolence three times. He also talks of their benevolent minds, p. 234.

* On Friday the 2d of March, Sir Robert Cecil states, that the committee of the House of Commons had had a conference with the Committee of the House of Lords, (a thing, by the way, keenly opposed by many, as tending to infringe the liberties of the Commons,) about a supply, and he says, that "their lordships will not give in any wise their assent to pass any act in their house of *less* than three entire subsidies to be paid, &c. And that to what proportion of benevolence, or unto how *much* their lordships will give assent in that behalf, they would not as then shew unto the said Committees of this house." The Lords insisted for further conference, but this was opposed by Bacon and others. The proposed grant was generally called a subsidy, and it is so by Cecil himself." P. 483. In page 484, the word benevolence occurs.

Amongst those who thought a conference with the Lords much prejudicial to the ancient liberties and privileges of this house, and to "the authority of the same," was Mr. Beale, who "insisted upon the preservation and maintenance of the former usual and ancient liberties and privileges of this house in treating of subsidies, contributions, and otherlike *benevolences* amongst themselves." P. 485. All the influence of ministers to procure a conference with the Lords, failed at this time, on the constitutional ground stated—and the following passage of the Journals is entitled to much notice. "It having been already overruled by the House, that there should be no conference admitted with the Lords touch-

the word be matter of wonder; for subsidy had also two significations, denoting in one sense, a general grant of money in whatever shape, in another,—a

ing the matter of the *subsidy*, which their Lordships had desired; it was therefore ordered, upon a motion made in the House, that some answer might presently be sent from thence to their Lordships, to satisfy them touching their said motion for conference; for that, in respect the said conference had been already denied, and had been voted to be prejudicial to the liberties of the house by the judgment of the same, that a convenient number of this house should be appointed presently in the name of this whole House, to give unto their lordships' most humble and dutiful thanks, for their said lordship's good, favourable, and courteous offer of conference, &c. and to signify unto their lordships that this house cannot in those cases of BENEVOLENCE *or contribution* join in conference with their Lordships, without a prejudice to the liberties and privileges of this House, and of the infringing of the same." They therefore pray to be excused, "for that so to have assented without a bill had been contrary to the liberties," &c. P. 486. A conference, however, was agreed to, on Monday the 5th of March, "touching the great and imminent dangers of the realm and state, and the present necessary supply of treasure,"—and Mr. Vice-Chamberlain in reporting, as one of the committee, the substance of what passed, says, "It was in the end, after sundry speeches of divers grave members of this House, tending to divers forms of provision of treasure, some by way of *treble subsidies and like proportionable fifteenths and tenths*, and some by other sorts of *benevolence* resolved, &c. p. 491. Now, it is worthy of remark, that this took place on the 7th of March, 1703, while Sir Robert Cecil made the speech, on which Mr. Hume founds his statement upon the 2d of that month. The difference of sentiment in regard to the supply, arose from the desire of many to relieve the lower ranks; but all the plans were strictly regular. The famous Bacon assented to three subsidies, but not to the payments under six years, and against the supply granted, he urged the impossibility of raising it on the one hand, and the danger of discontent on the other; and, lastly, the *danger of the precedent*. "This being granted in this sort, other princes hereafter will look for the like; so we shall put an evil precedent upon ourselves and our posterity: and in histories, *it is to be observed, that of all nations*, the English are not to be *subject, base or taxable*." P. 493.

specific assessment; so that sometimes one subsidy was given, with tenths and fifteenths, at others, two, three, four, and so on: a supply was likewise called a free gift, a free grant, a contribution.

Having cleared up this subject, and displayed upon what a sandy foundation the historian builds, it will be proper to mention, that the two houses of Parliament, did, in the year 1586, depart from the regular course, by contributing amongst themselves a certain sum for the purpose of assisting her majesty in her wars in the low countries*. Their object was to aid the sovereign without burthening the inferior classes, who groaned under the load of taxation; and who shall dare to censure this manly act, because they unanimously performed it without the formality of a bill, entertaining no groundless, cold-hearted, fears of danger from the precedent? Has there ever been, or is there now any principle, either in the theory or spirit of the constitution, to blast such generosity? And, instead of indulging in absurd deductions against those times, ought we not to lament, that the precedent of that assembly has been lost upon their successors? But, lest it should be imagined that Cecil alluded to this contribution, it may be again observed, that her majesty thankfully received it. The clergy in convocation also granted one, which was not confirmed by act of Parliament †.—The resolution of the

* D'Ewes, p. 386, 387, 390.

† The grant by the Clergy, though in convocation, was more questionable, because it was leviable upon the whole clerical body, instead of

Commons in the 4th of Charles I. affords additional proof in support of our statement: "That it is the ancient indubitable right of every freeman, that he hath a full and absolute property in his goods and estate; that no tax, tallage, loan, *benevolence*, or otherlike charge ought to be commanded, or levied by the king or any of his ministers, *without common assent by act of Parliament.*"

The power to impose customs, &c.

"Queen Mary also," says Mr. Hume, "by an order of council, increased the customs in some branches, and her sister imitated the example." Magna Charta, which merely confirmed the common law, expressly provides against every thing of the kind, and, so firmly was the principle established, that there does not occur an instance of any imposition on merchandize, having passed without being complained of in Parliament as a grievance and being redressed; nor even of any attempt to impose, from the time of Edward III. till the fourth

being a contribution by the individual members of convocation, and yet was not regularly passed into a law. Strype's Life of Whitgift, p. 261, *et seq.* Annals, vol. iii. p. 405. It cannot be unknown to the reader, that the practice was for the convocation to offer a subsidy, and send it under the royal hand and seal to the Commons, as a money bill for the approbation and sanction of the Legislature. See D'Ewes' *passim*, particularly p. 229, 615, 688. This was omitted; but no objection to the payment had been made by the Clergy, and Parliament, which, we may readily suppose, would not have refused its assent, never interfered. This precedent was afterwards taken advantage of by Laud, in 1640, as we shall afterwards see,—a proof of its unusualness. Troubles and Trial, &c. p. 80. The Clergy were likewise assessed at this time with a charge of troops for the low countries, which was doubtless illegal, but they did not stand upon legal rights with their patroness. Strype's Annals, vol. iii. p. 406, *et seq.*

of Queen Mary, a period of nearly 200 years*. The military achievements of Edward III. gave him great influence in such an age, and he availed himself of his popularity, to impose new duties on commerce: But parliament never permitted any thing of the kind to pass unnoticed, and he, far from pretending to the power of imposing, adopted the readiest way to recover his popularity, by recalling the measure, applying in the regular form for subsidies, and thankfully accepting of them as gifts—thereby directly disclaiming the idea of exacting any thing as a right †. Queen Mary, who revived a practice which had been so often reprobated and repressed, and so long unattempted, did not arrogate the right of imposing, but evaded the law, which she did not venture avowedly to break. The custom of wools had, in consequence of the improvement in the English manufactures, greatly decayed, as, instead of the raw produce, much woollen cloth had been exported; and the same quantity of wool which, in its raw state, would, owing to later duties, have paid 10s. was, when wrought up, chargeable with 4s. 8d. only. The regulation was calculated to promote English manufactures; but Mary, (whose government should never be cited as illustrative of the ancient constitutional principles,) alleging that the wool was liable for the duty, in whatever shape it was exported, and being then engaged in a war with France, and much in want of money, laid an

* 2d Inst. 61. † Id. Mag. Chart. Ch. 30.

additional assessment upon the cloth, which however did not nearly equalize the duties *. She died the next year, and a loud clamour against the imposition was raised by the merchants in the first of Elizabeth. That princess assembled the judges to deliberate upon the measure, and give their opinion upon its legality; but, though her successors readily obtained both judicial and extra-judicial sanctions to their extortions, it was to the credit of Elizabeth that her judges would not prostitute their office by an opinion in her favour †: While all the great lawyers, including Plowden, openly condemned the tax as altogether unconstitutional; nay, Plowden composed an argument against it ‡. She herself did not pretend to any right to alter the customs, but rested her plea entirely on the equity of the thing, arguing that, though it did not fall within the words, it did within the spirit of the laws in regard to wool, and therefore ranked it under the old customs to

* Treatise by Sir Mat. Hale, published in Hargrave's Tracts, Part III. Mr. Hackwell's argument against Impositions, 4 James I. Howel's State Trials, vol. ii. p. 453. Aliens paid higher duties; but as the illegal assessment was proportional, I did not conceive it necessary to specify the rates. See the whole of the great case of impositions in 4th James I. Howel, vol. ii. p. 371 to 534.

† Dyer's Reports, p. 164, 165 "It was complained of by the merchants," says Dyer, "with great exclamation, and they sent to the queen to be unburthened of it, because it was not granted in parliament." Ib. Strype's Annals, vol. i. p. 15.

‡ Hargrave's Observations on the great case of impositions, 4 James I. in Howel's State Trials, vol. ii. p. 378. See also p. 454, and Preface to Hargrave's Tracts.

disguise its illegal origin. With this, possibly, the merchants were satisfied, and parliament, with the nation at large, then occupied with the most important affairs that can engross the attention of any state, and perceiving no disposition to extend the precedent into a right, permitted the illegality of the measure to fall into oblivion. Even in Philip and Mary's reign, the right to impose was directly questioned, and the judges decided against the crown. The town of Southampton obtained an exclusive grant by letters patent to import Malmsly wines, and all others were prohibited under the pain of treble customs—a mere device to raise the duties. But when the matter was tried in the exchequer, upon an information by the Attorney-General against certain merchants, "two points were," says Sir Edward Coke, "resolved by all the judges, 1. That the grant made in restraint of landing of the said wines, was a restraint of the liberty of the subject against the laws and statutes of the realm. 2. That the assessment of treble custom was merely void, and against law: as it appeareth by the report of the Lord Dier, under his hand, which I have in my custody *." There occurred in that reign, however, another instance of evasion of the law. On the breaking out of the war with France, she prohibited intercourse with that county—a measure that might have

* 3d Inst. p. 61. Bacon, in his defence of Elizabeth's government against a libel in 1593, alludes to this imposition; but though, in the next reign, he argued for the right to impose, he did not in this.

been proper in itself, had she not evinced that it proceeded from an improper motive, and then allowed it to those who procured a license to trade at a certain rate of duty on the articles imported. Elizabeth pursued the same course in regard to sweet-wines on the war with Spain. The injustice of both Queens is sufficiently manifest from these instances; but, independently of the judgment against Mary, and the legal opinions in the next reign, the very subterfuges to which they resorted, afford the best evidence of the feelings and understanding of the age on that subject *.

* 2d Inst. Mag. Ch. c. 30. De Tal. non Conced. c. 1. 4th Inst. p. 29, 30, 31, 112. Hargrave's Tracts. The great case of impositions in Howel, vol. ii. Mr. Hume quotes triumphantly the treatise by Sir John Davies on impositions; but it is well known that this lawyer wrote the treatise from very unworthy motives, as did Bacon another at the same time. The argument by Davies is so extraordinary, that, since it has been so much relied on by Hume, we shall be excused for giving an abstract of it. We shall premise, however, with mentioning, that Davies expressly states that no imposition by prerogative had been attempted from the time of Edward III. till that of Queen Mary. "*True it is,*" says he, "*that during the reign of these princes,*" (the successors of Edward anterior to Mary) "*we find no impositions directly set upon merchandise by their absolute power or prerogative.*" c. 17. His argument is to this effect: The subject is to be judged by the law of nations, which the common law acknowledges, and which existed before the common law. The civil and canon law, however, form part of the law of nations, and these allow the prince to levy impositions at will. But all absolute princes, according to Fortescue, are equal; (by the way, Fortescue's whole statements are repugnant to the most distant idea of absolute power, being lodged in the king of England) and, as the king of England has equal power with other monarchs, he has a right to impose. This may be inferred from his other prerogatives, which are of a higher description,—as the power of making peace and war, prohibiting the subject from quitting the kingdom, laying embargoes, &c., but it would be

"Embargoes on merchandise," says Mr. Hume, "were another engine of royal power by which the English princes were able to extort money from the people. We have seen instances in the reign of Mary. Elizabeth, before

Embargoes on merchandise.

strange if the greater power were given, and the less withheld, therefore we may infer that he enjoys the power to impose. The king has a right of property in the ports, which are called his, and consequently may lay impositions upon the trade of those ports which are his own. He is the fountain of justice, and bound to administer it to merchants. But this cannot be done without expense; therefore he may indemnify himself. He is obliged to protect commerce, and as that cannot be done without cost, so he justly lays impositions to meet the outlay: And, with regard to the greatness of the power, that affords no argument against it, since he has greater, even the appointment of the judges. The nature of customs appears from the name, and the records admitting them appear to be anterior to the statutes, ergo, they were imposed by prerogative. As for the various statutes which seem to limit the prerogative, they are of no force, *because the prerogative cannot be restrained.* Edward I. laid impositions, and though the commons complained, he remitted them of mere grace. Edward II. took a new custom in the beginning of his reign; but being a weak prince, and overruled by his barons, consented to abolish all impositions not given by Parliament. Edward III. imposed many duties by his prerogative; and though he remitted them at various times, it was on the petition of the Commons, and in consequence of larger grants in a parliamentary way. The examples of severity at the close of that prince's reign, which he imputes to other causes, struck such a terror that there was no attempt to impose afterwards till the time of Mary. But what then? Calais was conquered from France, and a staple was established there by Edward III. by which he laid impositions out of the kingdom, and obliged the merchants to carry their exports thither. "This he did by ordinance in virtue of this prerogative; *and if this ordinance so made had been thought unlawful and against the liberty of the subject, it would never have been approved and confirmed by so many parliaments in the times of Rich. II. Henry IV. Henry V. and Edw. IV. neither could there have been such heavy penalties laid by these parliaments upon the transgressors of those ordinances.*" Queen Mary used

her coronation, issued an order to the custom-house, prohibiting the sale of all crimson silks which should be imported, till the court were first supplied. She expected no doubt a good penny-

her prerogative after she lost Calais, and though the merchants in the beginning of the next reign complained of it, yet it was continued. The judges were assembled; *and though their judgment is not to be found, we may conclude that it would have been favourable to the crown.* (Here he argued unphilosophically from his own corruption.) Elizabeth also imposed some new duties. In the 33 chap. he has a comparison between the impositions set and taken in England by the prerogative and the gabelles, &c. of other countries, "whereby it will appear, that the subjects of the crown of England do not bear so heavy a burthen by many degrees as the subjects of other nations." He impudently contends, that the king of England has as much power as any emperor of Rome or of Germany, or any other state or prince in the world; but he admits that the English monarchs had not exercised their authority. He gives a melancholy picture of impositions on the Continent, and says, "Thus we see that the king of England doth lay but his little finger upon his subjects, when other princes and states do lay heavy loins upon their people." This he ascribes not to a difference of power, but of gracious qualities in the prince. "Lastly," says he, "our kings of England, in their wisdom, well understood the nature and dispositions of their people, and knowing them to be a free, generous, and noble nation, held them not fit to be beaten with Rehoboam's rod, esteemed them too good to be whipt with scorpions; and therefore, God be blessed, we have not in England the gabeller standing at every town's end; we have not a publican in every market; we pay not a gabelle for every bunch of reddish, or branch of rosemary, sold in Cheapside; we have no complaining in the streets, as is said in the 144th Psalm; and therefore I may well conclude with the conclusion of that psalm, 'Happy are the people that are in such a case, blessed is the people that have the Lord for their God above in heaven, and king James for their king here upon earth.'"

In p. 155, he well observes, that "in France the most richest and ancientest of the neighbour kingdoms, the impositions not only upon merchandize crossing the seas, but also upon the lands, goods, and persons within the realm are so many in number, and in name so divers, as it is a pain to name and recollect them all."

worth from the merchants while they lay under this restraint." As the learned historian had alluded to the embargo in the time of Queen Mary, under the head of customs imposed by her, he ought not to have repeated it, as if it had been another engine to extort money; and, with regard to the instance in the reign of Elizabeth, it is necessary to do little more than quote the words of the authority to which this elegant writer refers: "That the coronation," says Mr. Strype, the only authority referred to "might be done with the greater magnificence, the customers of London were appointed to stay all crimson-coloured silk as should arrive within their ports until the queen should first have her choice towards the furniture of her coronation; and to give warning to the Lords of the Council if any such should arrive there. *But, nevertheless, to keep the matter secret**." This argues a lamentable meanness in Elizabeth, but does not support the historian's statement. She does not pretend to stop the goods by her prerogative; for, in that case, secrecy would

Such is the treatise which Mr. Hume selected as affording the most indisputable evidence of those powers in the throne which he chose to ascribe to it. (See also in Carte's Hist. vol iv. p. 191, a transcript from Manuscript in Davies' hand-writing.) But it is quite clear, that the acknowledged constitutional principles in his own time would have given ground for similar deductions, because the powers from which Davies drew his inferences have not been taken from the crown. By the way, nothing demonstrates the stretches of prerogative attempted by the Stuarts, so much as the shameless profligacy of the leading lawyers. Bacon also prostituted his pen in this question; but he assumed a different and more modest ground, claiming it from law.

* Strype's Annals, vol. i. p. 27.

have been impracticable: She evidently trusted to the ingenuity of the customers to invent excuses for detaining the goods, and affords the clearest proof of the illegality and novelty of the measure, by sending the injunction "to keep the matter secret." Upon the subject of embargoes in general, we shall only observe that the law does not appear to have undergone any material change. There had been no fewer than thirty acts about opening and shutting the ports. The power entrusted to the sovereign on this head is conceived to be requisite, in order to prevent a greater evil. But it was always held as law, that no dispensation or licence contrary to the embargo could be granted for money by the prince. Sir Ed. Coke, amongst others, is explicit on this point; and Sir Mat. Hale, who has told us that proclamations with various penalties, which neither could be, nor were intended to be enforced, were occasionally issued, observes, "that if it were admitted, that in these particular cases of arms, ammunition, victuals and, money, such proclamations might be made, and thereby the offenders might be subject to fine and imprisonment; yet it could not be extended to other things, neither ought or might this inhibition be an engine to gain money by licences. For, if the proclamation had any strength, it was because of the inconvenience of the exportation of those things. If it were not a public inconveniency, it could not be inhibited barely by proclamation; and, if it were a public inconveniency, it might not be licenced for private profit. If it might, the

strength of the proclamation would consequently cease *."

" The sovereign even assumed a supreme and uncontrouled authority over all foreign trade; and neither allowed any person to enter or depart the kingdom, nor any commodity to be imported or exported, without his consent." The slightest examination might have satisfied Mr. Hume, that his statement was altogether erroneous and unfounded; and that the law in regard to embargoes, and to opening and shutting the ports, differed then very little from what it was in his own time †. As to the right of individuals to enter or quit the kingdom, the utmost liberty was allowed at common law, unless the prince laid a positive prohibition; but by the 4th chapter of the constitutions of Clarendon, ecclesiastics were restrained from going abroad, because, from the attachment to the Romish see, they promoted its usurpation over the liberties of England; and, by the time of Edward I. peers were also restrained, because they were the regular counsellors of the crown; knights, because they were bound to defend the kingdom from invasion; archers and artificers, because they carried the arts out of the kingdom. But by 5 Rich. II. C. 2, matters were so far reversed, that great men and notable merchants only were permitted to pass beyond seas at *pleasure*. By the 25th of Henry VIII., it was provided that

Power assumed by the sovereign over foreign trade, and over the persons of individuals in preventing them from travelling without a licence.

* Hargrave's Tracts, Pars ii. c. 9. p. 96. See the whole chapter.

† 3 Inst. c. 84. Hale's Treat. in Hargrave's Tracts. The great case of imposition already referred to in Howel. Blacket. vol. i. p. 266.

"no person resident within any of the king's dominions should depart out of any of those dominions, to any visitation, congregation, or assembly for religion;" this was revived for a limited period, by the 1st Eliz. c. 1.* The powers granted to the crown may be imprudent, or impolitic; but, where the legislature thinks it necessary to make a provision against any supposed evil, it is, surely, not logical to rank this under the head of prerogative. The prince is bound to execute the laws, though these may not always be consonant to strict principles of policy or general liberty. When the supposed necessity for the act ceases, or more enlarged notions are entertained, an alteration is made upon the law. This accordingly happened on the point we are now discussing; the law of Richard II. prohibiting the people from going abroad having been repealed; but the prerogative was not abridged, nor yet is, since the prince has always possessed the power of restraining, under severe penalties, any individual from leaving the kingdom—by the writ *ne exeat regnum:* The principle of the law is, that certain individuals might, on great occasions, injure the state by carrying information abroad; and it is thought better to lodge in the king a power that may be abused to the oppression of an individual, than expose the nation to the hazard of ruin. This branch of the prerogative however, has long been unexercised; and, even in Elizabeth's time, restraint was rarely used.—"No

* 3 Inst. c. 81. Hale's Treatise in Hargrave's Tracts, and the great case of impositions already referred to. Blackst. vol. i. p. 260.

man could travel," says Mr. Hume, "without the consent of the prince. Sir William Evers underwent a severe prosecution because he had presumed to pay a private visit to the king of Scots." The true answer to this account of the prerogative, is the view which we have given of the law: But this case of Evers, when investigated, shews that the government of Elizabeth, in the exercise of powers committed to her by the legislature, was not characterized by rigidness. It happened about the close of that Queen's reign, when she had the mortification to discover that her courtiers turned their eyes towards the rising sun. Evers went to Scotland for the purpose of intrigue, and he was detected: Yet, while he might legally have been punished for leaving the kingdom without a licence, he suffered imprisonment for merely having solemnly denied that he had been at the Scottish court. Whether his confinement was long continued does not appear *.

"There was," says Mr. Hume, "a species of ship-money imposed at the time of the Spanish invasion. The several ports were required to equip

The species of ship money said to have been imposed by Elizabeth at the time of the Spanish invasion.

* Hume has quoted Birch's Mem. vol. ii. p. 508. in support of his statement; but it would have been better to have gone to Birch's own authority, which is the following passage of a letter from the Secretary to Sir R. Winwood then in France, regarding the Scotch ambassadors:—"Some small requests they made for Sir William Evers, who is in prison, for coming secretly to see the king in Scotland, which he afterwards abjured when the contrary was plain, and so only imputed to him in that respect *pro delicto*." Winwood's Mem. vol. i. p. 324. See a very characteristic letter of James, in regard to the intrigues in which Evers was concerned. The English began to be much discontented with Elizabeth's government. Birch, Ib. *et seq.*

a certain number of vessels at their own charge, and, such was the alacrity of the people for the public defence, that some of them, particularly London, sent double the number demanded of them." In other words, the sea-ports, animated, like the rest of the nation, with zeal for the public defence at such a crisis, volunteered ships and men *. It does not appear that any compulsive means were attempted, and it cannot be denied that, if ever a case could justify an illegal mode of calling out the resources of the country, it was the one in question, when an invasion, which threatened every thing valuable in existence, was daily apprehended. At such a crisis, such as do not shew alacrity in the public defence, may be considered concealed enemies. And, at that period, as it was ships and men, not money, that were required, so all classes volunteered their services. Surely, therefore, it would be a poor return for that noble spirit which baffled the attempt of the enemy, and preserved for their posterity so many blessings, to cast obloquy upon conduct that ought to endear their memory to us, as if they had sanctioned an illegal tax; or to liken a measure which, though imperiously called for, was yet voluntary, to a proceeding by the prince, that arose from a determination to overturn every constitutional principle of government, by raising money without the intervention of the legislature.—In 1601, the city of London, on an apprehension of a fresh attempt by the Span-

* Maitland's History of London.

iards, again raised men for the public defence, and fitted out a certain number of gallies—conduct for which they received the royal thanks †. It may be imagined that, possibly, the city might not, on the last occasion, have been so forward, had it not been for their secret conviction of the overwhelming influence of the crown, but, as they maintained at least the appearance of volunteering, while they, with the rest of the kingdom, knew that any compulsory demand of the kind was unconstitutional, it must be admitted, that they reserved their right to resist any thing of the kind, whenever they perceived that they could do it with effect. The grand constitutional limits to the prerogative at least, still remained unaltered in the estimation of all men.

New-year's gifts.

"New-year's gifts were expected at that time," says the historian, "from the nobility, and from the more considerable gentry." In support of this statement, he quotes, from Strype, an account of new year's gifts to Henry VIII. in the year 1532. But, had that very document been examined, it must have satisfied him of his mistake. The value of the whole gifts amounted to L. 792, 10s. 10d. and the number of the granters was thirty-eight, of whom twenty-four were ecclesiastics. Had such gifts been expected from all the nobility, we should have found all their names in the list; yet it contains the names of fourteen laymen only, and,

† Maitland's History of London, p. 171. They seem to have been adventuring with the Queen in fitting out vessels, and to have acquired a good share of the booty. Strype's Annals, vol. iv. p. 128. *et seq.* regarding the carrack taken in 1592.

of these, just seven were peers. The fact is, that new year's gifts were then in fashion; and that those who depended upon the court, or desired its patronage, embraced that method of testifying respect for their master; while, if they did not always obtain similar presents in return, which however appears to have been the case, they expected something, in another way, infinitely more valuable. Accordingly, of the seven commoners, whose names as donors appear in this list, one was master of the rolls, and another was "Hasilwood of the receipt*." But what sets this matter completely at rest, and evinces how readily the historian caught hold of every insulated circumstance which seemed to afford a basis for his theoretical view of the ancient English government, is an original document in the British museum, being a long roll of vellum, signed by Elizabeth in three different places, which contains an exact account not only of all new-year's gifts to the queen, but of those by her, in the eighteenth year of her reign. Those to whom gifts were made, were ladies of quality, maids of honour, and other ladies, statesmen, noblemen, bishops, and gentlemen, including those of the bed-chamber. The presents were in plate, almost all gilt, and the weight of the whole was 5109½ oz. On the other side of the roll is a list of gifts to the queen, and these are by the identical individuals to whom she had made them. The gifts to the sovereign were in money, and the whole amount was L. 1052, 16s.

* Strype's Ec. Mem. vol. i. p. 137.

8d. which, I presume, would be about the value of the plate. In short, this mighty affair, from which, amongst other things, Mr. Hume infers, that "the inventions were endless which arbitrary power might employ for extorting money," turns out to have been a mere reciprocity of politeness and kindness between the monarch and the principal subjects who had access at court; and the latter just appear to have given, on those occasions, the price of what they received, while those mutual favours were calculated to secure for them benefits of a far higher kind *.

"The legislative power of parliament," says Mr. Hume, "was a mere fallacy, while the sovereign was universally understood to possess a dispensing power, by which all the laws could be invalidated and rendered of no effect. The exercise of this

Power of dispensing with the laws.

* Ayscough's MS. Brit. Mus. No. 4837, entitled thus, "Anno Regni Regine Elizabeth. Decimo octavo. New yeres guiftes geven by the Queene's Maiestie at her Highness Honor of Hampton Court, to theise persones whose names hereafter ensue the ffirst of January the yere aforesaid." On the other side is the list of presents to her. The roll also contains an account of plate, some of it in gold, and of considerable weight, given in presents on other occasions.

Mr. Hume has charged Elizabeth with breaking faith with Raleigh, in regard to the expedition undertaken by him and Frobisher in 1592, and the prize of the Carrack worth £200,000; for that her share amounted only to a tenth, and that, when the prize was so great, she would not be satisfied, and Raleigh earnestly requested her acceptance of £100,000 in lieu of all demands. But there seems to be a mystery in the case. Great part of the wealth had been pilfered; and Raleigh appears to have been suspected of unfairness, and to have been imprisoned on that account. See all the papers about it in Strype, vol. iv. Nos. 81, 82, 83, 84. 85. Camden, p. 569. His whole conduct was censured on the occasion. See Life prefixed to his Hist. p. 5.

power was also an indirect method practised for erecting monopolies. Where the statutes laid any branch of manufacture under restrictions, the sovereign, by exempting one person from the laws, gave him in effect the monopoly of that commodity. There was no grievance at that time more universally complained of than the frequent dispensing with the penal laws."—We shall first speak of dispensations from the penal laws, which, according to the historian, were so much complained of. One of the powers annexed to the crown, has always been that of pardoning criminals and remitting penalties, while the sovereign is not legally obliged to prosecute in any particular instance. Hence sprung the exercise of another power, which, though illegal, was analogous to the undoubted privileges of the monarch—that of granting dispensations to individuals from the penalties of certain statutes that were supposed to press particularly hard upon them, (and, from the number about apparel, for instance, "some of them fighting with and cuffing one another," as well as those about uniformity, &c. in religion, such must frequently have been the fact) that they might not be vexed by informers. But one departure from law, seldom fails to introduce another. In bad times, those of Henry VII. during the ministry of Empson and Dudley, and of Mary particularly, power to grant dispensations and compound for forfeitures, was procured from the crown by certain persons, who by that authority

oppressed the people *. This last, however, was always held to be grossly illegal, and Sir Edward Coke lays it down, "that all grants of the benefit of any penal law, or of power to dispense with the law, or to compound for the forfeiture, are contrary to the ancient fundamental laws of the realm." He informs us also, that "it was one of the articles wherefore the Spencers in the reign of King Edward II. were sentenced, that they procured the king to make many dispensations." The understanding of people in Elizabeth's time, and the general practice of government, may be estimated from the following passage in Smith's Commonwealth. "The prince useth to dispense with lawes made, whereas equitie requireth a moderation to be had, and with paines of transgressing of lawes, where the paine of the lawe is applied only to the prince. But where the forfaite, as in popular actions it chaunceth many times, is part to the prince, the other part to the declarator, detector, or informer, there the prince doth dispense with his part only †. Where the criminall action is intended by inquisition, (that manner is called with us at the prince's suite) the prince giueth absolution or pardon, yet with a clause, *modo stet rectus in curia*, that is to say, that no man obiect against the offender. Whereby,

* 3d Inst. p. 187. See Coke's Reports, part 7. p. 63. case of penal statutes, 2 Jac. Hil. From this case, it appears, that Elizabeth had granted a power to compound. I hope it was a solitary instance, and the Judges condemned it.

† Smith's Commonwealth, B. ii c. 4.

notwithstanding, that he hath the prince's pardon, if the person offended will take upon him the accusation (which in our language is called the appeale) in cases where it lieth, the prince's pardon doth not serue the offender." With regard to dispensations which laid any particular branch of commerce or manufactures under a restriction, they could not be too much reprehended, and parliament itself had early exerted its powers to prevent so great a grievance. "In the 50th of Edward III." says Coke, "Richard Lions, a merchant of London, and the Lord Latimer, were severely sentenced in parliament for procuring licenses and dispensations to transport wools *." On the subject of monopolies, in general, we shall only observe in passing, that they were carried in Elizabeth's time to a monstrous height, and that they were clearly illegal; but that Mr. Hume has not been fortunate in an instance adduced by him to exemplify the effect of dispensations from a law that laid any particular manufacture under restriction. A statute passed in 1576, prohibited goldsmiths from selling articles under the fineness of twenty-two carrats. An individual, however, had, long anterior to the act, manufactured certain articles of a lower standard; and, as the statute threatened him with ruin, the Queen granted him a dispensation for the

* 3d Inst. c. 86.—Also Rot. Parl. 50 Ed. iii. no. 17 and 28., vol. ii. p. 323 and 326. These both directly strike against monopolies, and dispensations of all kinds, and the first does also against impositions on merchandize, without an act of Parliament.

sale of the particular articles which he had prepared before the passing of the act, and which are specially described in a schedule annexed to the patent *. This was illegal; but not such as could excite any considerable discontent.

"But, in reality," says Mr. Hume, "the crown possessed the full legislative power by means of proclamations, which might affect any matter even of the greatest importance, and which the Star-Chamber took care to see more rigorously executed than even the laws themselves. The motives for these proclamations were sometimes frivolous and even ridiculous. Queen Elizabeth had taken offence at the smell of woad, and she issued an act prohibiting any from cultivating that useful plant. She was also pleased to take offence at the long swords and high ruffs then in fashion. She sent about her officers to break every man's sword, and clip every man's ruff which was beyond a certain dimension. This practice resembles the method employed by the great Czar Peter to make his subjects change their garb." This is a very extraordinary statement. The legislature had conferred a certain power upon the throne in the time of Henry VIII. to issue proclamations, which, to a limited extent, were to have the effect of laws; but the power was withdrawn in the next reign, by the authority that conferred it, and no one ever ascribed to the prerogative of itself any right to alter the laws of the land. With regard to the instances referred to by Mr. Hume,

Proclamations.

* Rymer's Fœd. vol. xv. p. 756.

they do not warrant his statement. Elizabeth deeming the smell of woad a nuisance, because she could not herself endure it, interdicted the cultivation of the plant; but parliament complained of the proclamation, and it was instantly recalled *. As for the others, they may be supposed too ridiculous to require any remarks, since people might not choose to impugn the illegal exercise of the royal power on such trivial occasions, and yet, upon examination, the matter will appear in a very different light. It was the practice of that age for people not only to go about with remarkably long swords, and to wear them in a threatening manner, but to carry a species of pocket-pistols called daggs, and to wear, besides, privy coats or doublets of defence. Thus arrayed, they disturbed the public peace, quarrelling with, and making frays upon, the unarmed. The quiet part of the community complained, and the Queen issued proclamations prohibiting the use of privy coats, &c. as well as daggs and similar weapons, which, she well observes, "in time of peace were only meet for thieves, robbers, and murderers." She enjoined, at the same time, that the swords should be reduced to a more moderate length, not exceeding a yard and half a quarter, a size supposed to be less formidable to the peaceful; and that they should not be worn in the "*hectoring*" way, then in fashion. It must immediately occur to the reader, that, had no statute devolved upon the

* D'Ewes, p. 652, 653. Townsend's Journals, p. 250.

executive the right of correcting such an evil, it belonged to the Queen as conservator of the public peace; but parliament had not been so inattentive to the general safety, for it had provided laws against going armed, by which penalties, such as forfeiture of the arms, fine, and imprisonment, were imposed upon the guilty. Elizabeth, therefore, proceeded upon powers vested in the throne by the legislature, and which subsist at this day. The proclamations were founded on statutes which were specially quoted*, and were perfectly legal as well as expedient. Sir Edward Coke observes, that such writs might be devised for the better execution of the statutes; and then says emphatically, in speaking of this subject, "Note, proclamations are of great force when they are grounded upon the laws of the realm †." Nor was it she who sent about officers to measure the swords, but the mayor of London, who, in carrying the proclamations into effect, sent select citizens to the several gates to ascertain whether they were obeyed ‡. Far from censuring this proceeding, we ought to mark it with approbation.—The case of the ruffs is more questionable in law, and luckily also in point of fact. It was the mistake of those times for the legislature to interfere with matters that ought to be left to the regulation of individuals, and many statutes had, from time to time, been devised against excess of apparel,

* Strype's Annals, vol. ii. p. 602, et seq.

† 3d Inst. p. 162. See ch. 73, about going or riding armed.

‡ Stowe's Survey by Strype. Temporal Government, vol. ii. p. 441.

which, it was imagined, tended to impoverish the nation, and draw after it a train of evils *. During Elizabeth's reign, parliament did not allow this subject to escape its notice, but passed three laws against that supposed mischief, while several bills were rejected †. In conformity with the laws, the Queen issued proclamations, in which she threatened to exact the penalties; but, as none of the statutes entitled her to meddle with the ruffs, so there appears to be only one authority for the story about them, and that a questionable one—Howes, the continuator of Stow. According to that writer, the ruffs began to be worn exceedingly high, and foreigners ridiculed the fashion as barbarous: To prevent this imputation, as well as the offence to the eye, the Queen sent about grave citizens to measure that article of dress, and curb the licentious use of it ‡. If Howes be

* 3d Inst. ch. 95.

† D'Ewes, p. 131, 188, 594. These laws had become very vexatious, and therefore by 1 James I. ch. 25, they were all abrogated. 3 Inst. c. 95.

‡ Howes mentions this in his Life and Raigne of James I. in his continuation of Stow's Annals, p. 869. After saying that the old English weapon was the sword with the buckler, he says that this continued not long; "for shortly after began long tucks and long rapiers, and he was held the greatest gallant that had the deepest ruffe and longest rapier. The offence to the eye of the one, and the hurt unto the life of the subject that came by the other, caused her majesty to make proclamation against them both, and to place selected grave citizens, at every gate, to cut the ruffes, and breake the rapier's point of all passengers that exceeded a yeard in length of their rapiers, and a nayle of a yard in depth of their ruffes." He says that the English called the ruffes the French fashion; but that the French disclaimed it, calling it the English monster. Now, in his Annals, Strype gives a particular account

correct, the acquiescence of the people may easily be accounted for, without even supposing that they connived at such a usurpation upon their privileges. When the royal proclamation had been issued, the common council applied to the throne for a mitigation of the laws; and, as this was granted, it is possible that Elizabeth might, at their request, consent to relax the rigour of the statutes, on condition of their restraining the offensive size of ruffs; and that those who were obnoxious to punishment

of the proclamations about the arms, which are grounded upon statutes; and, in his edition of Stow's Survey, which, considering the accuracy both of the original author and the editor, we must conceive to be correct, it is expressly said that the mayor, out of his sense of official duty, sent the citizens to different quarters of the city to inspect the swords. Many accidents and quarrels had happened. There is, however, no mention of ruffs either in the account of the proclamations about apparel given in the Annals, or in the Survey, while it is particularly mentioned in the last that the common council of London petitioned the Queen to relax the rigour of the statutes, as many informers were abroad vexing the people by prosecuting for the penalties, &c. Ib. Now it is inconceivable that such an omission should have occurred; and, with regard to another authority quoted by Mr. Hume, Townshend's Journals, it has not the most distant allusion to such a subject. Sir R. Cecil, in announcing the recalment of monopolies, thus addresses the house humorously, but in bad taste, "That you may eat your meat more savoury than you have done, every man shall have salt as good cheap as he can buy it or make it freely, without danger of that patent which shall be presently revoked. The same benefit shall they have which have cold stomachs, both for *aquavitæ*, aqua composita, and the like," &c. After proceeding in this way, he says "Those that desire to go sprucely in their ruffs, may with less charge than formerly accustomed obtain their wish; for starch, which hath been so much prosecuted, shall now be repealed." Townshend's Journ. p. 250. D'Ewes, p. 652, 653. Surely this does not support Mr. Hume's statement. Nay, it does the reverse; for if Elizabeth had really taken such offence at the size of the ruffs, the secretary would have hinted that he hoped gentlemen would not wear them too high.

by statute-law for excess of apparel, (such only would be likely to wear uncommon ruffs,) would be satisfied to suffer in that respect, when they found themselves relieved from the legal penalties in another. But, indeed, this is a point scarcely worth investigation; as it would not be any great proof of slavishness in the people that they were above contesting a trifle of this kind with a beloved monarch, whom they, with the rest of Europe, considered the bulwark of the protestant cause; and, unless it be supposed that the historian could have produced something more important to justify his general statement, few will be inclined to adopt his view of the government in that age.

Stopping the course of justice by particular warrants.

Stopping the course of justice by particular warrants, is reckoned by Mr. Hume amongst the abuses of those times, and one of the strongest proofs of arbitrary power: He says also, that parliament, in the thirteenth of the Queen, praised her for not imitating this practice, which was usual amongst her predecessors; but he has scarcely done justice to his authority. In those days, the speaker of the Commons, when presented to the Sovereign for his or her approbation, used to make a fulsome oration upon the excellency of the present ruler: high compliments passed on both sides, and abuses of former times were brought forward to form a contrast with the felicity of the present. In the course of his harangue, the speaker, on the occasion alluded to, in the 13th of Elizabeth, "said something in commendation of her majesty, who had given free course to her laws, not sending or requiring the stay of justice as heretofore *sometimes*

hath been by her progenitors used. Neither hath she pardoned any, without the advice of such before whom the offenders have been arraigned, and the cause heard *." The historian says, that " the Queen, in refraining from the practice, was very laudable. But she was by no means constant in this reserve. There remain in the public records some warrants of hers for exempting particular persons from all law-suits and prosecutions; and these warrants, she says, she grants from her royal prerogative, which she will not allow to be disputed."

This abominable practice early attracted the attention of the legislature, and is expressly provided against, not only by Magna Charta, but by other statutes. Nor were the laws on this head considered a dead letter; as courts of justice had repeatedly adjudged the warrants to be void †. Mr. Hume has referred merely to the warrants themselves, which neither shew the circumstances out of which they emerged, nor the consequences with which they were attended; and he holds that, because the queen in common form declares, that she will not allow her command to be disputed, these warrants could not be impugned; but, had he consulted Coke's Institutes upon this point, he would have discovered that, not only in early reigns, but in those of Henry VII. and Henry VIII. and even of Elizabeth herself, these warrants had been resolved by the

* D'Ewes, p. 141. See those orations generally as to the strain of them, as well as addresses to the speaker.

† 2d Inst. p. 56. See also Stat. 5 E. II. c. 32. 2 Ed. III. c. 8. 14 E. III. St. 1. c. 14. 11 Rich. II. c. 10.

judges to be against law, and the sheriffs had been amerced for not executing the writs. Nay, it is very singular, that one of the three warrants referred to by Mr. Hume, is also specially referred to by Sir Ed. Coke, as having been adjudged void *.

Monopolies. The great grievance of Elizabeth's reign was monopolies.—When an individual, by applying talent, time, and industry, to any particular object, has made a discovery, there seems to be no way so well calculated to remunerate him without injury to the community, as to grant him the exclusive right to the benefit of the invention for a certain term of years. This principle was early understood; but Elizabeth, availing herself of it, granted exclusive patents for ordinary manufactures, either as gifts to her courtiers, or as a mean of procuring money for the crown; and the whole nation sensibly felt the effects of such a system, which was not only against the fundamental laws of the realm, but had been often adjudged to be so, even in parliament, as well as in the ordinary courts of justice †. In the course of Elizabeth's time, the evil swelled to that magnitude, that the people at large bitterly cried out against it, and though parliament adopted language on the occasion little consonant to the public spirit of that assembly in the former parts of the same reign, the ministers of the Crown, with the Queen herself,

* Mr. Hume has referred to three different places of the 15th vol. of Rymer's Fœd. for such warrants by Elizabeth, and the second is p. 708. Now, the warrant is in favour of Hitchcocke, and this is cited by Coke as having been condemned. 2d Inst. p. 56.

† 3 Inst. ch. 85. A new statute against them was passed in the next reign, 21 J. I. c. 3. when the evil had got very high. The statute bears to be a recognition of ancient laws.

perceived it to be full time to yield to the public voice. Sir R. Cecil, when he announced to the Commons her Majesty's purpose to recal the patents, complained that "Parliament matters were ordinarily talked of in the streets." "I have heard myself," says he, "being in my coach, these words spoken aloud—'God prosper those that further the overthrow of monopolies. God send the prerogative touch not our liberty.'—The time was never more apt to make ill interpretation of good meanings. I think these persons would be glad that all sovereignty were converted into popularity* ." Mr Hume has justly remarked, that, had the system of monopolies been continued, England would have contained at present as little industry as Morocco or the coast of Barbary; but he ought to have seen, at the same time, that, since such a spirit was abroad, it would have required a band of Janizaries to have supported the throne in such an unconstitutional proceeding. Elizabeth herself, politicly pretended to have been misled, and expressed the utmost indignation against the patentees, vowing vengeance upon them for their crimes, and solemnly protesting, with an appeal to heaven, that she never had granted one patent, which she did not believe to be conducive to the public good†. Some of the patents were then remitted to the courts of law, by which they were condemned, and made void as illegal‡.

Wardship, as one of the feudal incidents, it is Wardship.

* D'Ewes, p. 653; but see p. 652.
† See her speech in D'Ewes, p. 659.
‡ 3d Inst. c. 85.

unnecessary to describe, because every reader of intelligence is acquainted with it. It has been generally regarded as a sad grievance of former times; but, in my opinion, the point may admit of a doubt. They who suffered under it, possessed advantages of the highest kind over the rest of the community; and this was just one of the conditions upon which they held so eminent a station, while it possibly was a mean of preventing the aristocracy from acquiring the most pernicious influence in society, by accumulations during the infancy of heirs. As society improved, wardship was properly abolished, because the other ranks had acquired such a standing in the community, that they could form a counterpoise to the aristocracy. In short, it was just a species of tax upon property; and we may observe, that the wards of the crown had better treatment than those of subjects. The right of giving the ward in marriage was one of the conditions of the holding; but the resistance of the ward was only attended with a definite pecuniary forfeiture.

Restraint upon the marriage of the nobility.

"None of the nobility," says Mr. Hume, "could marry without permission from the sovereign. The queen detained the Earl of Southampton long in prison, because he privately married the Earl of Essex's cousin." With the exception of wardship, which applied to other immediate vassals of the crown as well as the nobility, I know of no law that permitted the sovereign to interfere in those matters. But, with the Tudor family, the nobility, who began to decline in influence in the community, became attached by many ties to the court, and

it was usual with them to consult the monarch in the grand affair of their marriage. This sprung from a feeling of interest, a desire of patronage, not from any notion of right in the crown to interpose in such affairs, and the non-observance of this practice appears to have provoked the royal displeasure, which, I presume, shewed itself in banishing, or debarring, the parties from court. Camden informs us, that Elizabeth resented the conduct of Southampton, in privately marrying without consulting her, and took deep offence at Essex, for appointing him master of the horse contrary to her orders; but the authority for the statement about the imprisonment, is the following passage in a letter by Essex: "Was it treason in my Lord of Southampton to marry my poor kinswoman, that neither long imprisonment, *nor any punishment besides, that hath been usual in like cases, can satisfy or appease* *?" What that punishment, besides imprisonment, was, except the loss of the royal favour and banishment from court, I cannot comprehend. But we may observe, that it does not appear that Southampton was ever prosecuted in any court of justice, even the Star Chamber; so that his case affords no proof of a right in the crown to meddle with such matters †. His imprisonment, however, admits of an easy solution.

* Birch's Memoirs, vol. ii. p. 472.

† The case of Lady K. Grey and the Earl of Hertford appears to support the text. Elizabeth was very jealous of competitors for the crown; and when the Earl of Hertford privately married Lady K. Grey of the blood royal, she adopted very rigorous proceedings, which were commonly condemned, and yet she did not allege the clandestine marriage as the cause. Hertford was allowed a limited time to prove

The openings for talent and enterprize in that age, were so extremely limited, that young men of the first families entered into the service even of subjects, while they who had the prospect of the royal countenance eagerly crowded to court. The treatment which servants were then exposed to, however, is revolting to our ideas: The sons of distinguished families could submit to personal chastisement. Nor was this a matter which could be remedied by law, because submission was voluntary. Those servants might easily have cast off their bondage, but they must have dismissed with it all hope of promotion, while what was common, and deemed a necessary ordeal through which enterprise passed to an eminent sphere in the state, reflected no disgrace upon the individual. Courtiers were also under a rigid discipline, and confinement in the Tower was a species of punishment to which they were exposed. Sir Walter Raleigh was imprisoned three months for debauching a maid of honour, the daughter of Sir N. Throckmorton; whom he afterwards married *. I presume that Southampton suffered as a courtier, and that he quietly submitted from the hope of

his marriage; but he failed to bring evidence within the period, and having passed through some doors of the prison to visit the lady, he was sentenced by the court of Star Chamber for debauching a virgin of the blood-royal in the Queen's palace, for having broken prison, and having abused her a second time. His defence was, *that he was married*. Cambden, p. 389.

* See his Life. Birch's Mem. vol. i. p. 79. 'The stat. 33 H. VIII. c. 12. against striking in the king's palace, excepts out of it, noblemen and others who correct their servants with their fists, or any small staff or stick. Sect. 6.

regaining her majesty's favour, and with it, honours, place, and other rewards, to which he eagerly aspired.

Purveyance was reckoned one of the grievances of that age; and it will be proper to give some account of it. Originally, the King's household was provided with necessaries from the royal demesnes; and the deficiency was supplied by a constant market kept at the Court-gate. As this was discontinued, purveyance began. At first, however, nothing could be lawfully taken without the owner's consent, the purveyors being merely caters employed by the Court. But, acting under the royal authority, they, at times, abused their office, by not sufficiently consulting the will of the sellers. The Legislature was not inattentive to the evil, while it sufficiently regarded the comforts of the Sovereign, who, in his progress through the kingdom, in ages when, from bad roads, &c. there were so many impediments in the way of quickly transporting provisions, must have often had the greatest difficulty in procuring the necessaries of life, and there had been no fewer than forty-eight statutes passed on the subject. By the early statutes, the sale to the purveyors was voluntary; but, by later ones, those officers, provided they had a commission under the great seal, were entitled to take certain articles for the Household, at prices which should be fixed by the constables, or other discreet men in the neighbourhood, who were first duly sworn to do justice to both parties. In spite of all the forty-eight statutes, purveyance was abused by the officers, whom Purveyance.

Elizabeth herself, in indignation, called harpies; and she expressed an intention of substituting for the practice, some other arrangement*.

Persecuting statutes.

The historian remarks, that "it is no wonder the Queen, in her administration, should pay so little regard to liberty, while parliament itself, in enacting laws, was entirely negligent of it." He then condemns the persecuting statutes which were passed against Papists and puritans, as extremely contrary to the genius of freedom; and observes, that "their conferring an unlimited supremacy on the Queen, or, what is worse, acknowledging her inherent right to it, was another proof of their voluntary servitude." In the preceding chapter we have had occasion to speak of the supremacy, and it will be perceived from it, that Mr. Hume has not taken a correct view of the matter. It is true that Elizabeth affected to have derived from it a discretionary power of regulating religious matters; but she confined her government within the pale of the laws. Sir Edward Coke proves that the supremacy was always vested in the crown of England. But his grand object was to vindicate the independence of that country on any foreign power. After quoting some old statutes, &c. he says that it

* 2d Inst. p. 542, et seq. Cambden p. 388. Mr. Hume says, that Elizabeth victualled her navy by purveyance during the first years of her reign; but Cambden, his authority, only tells us, that in 1561, "she revoked certain warrants which had been issued out for victualling the fleet, giving money to the commissioners to buy it without burthening her people." Ib. The warrants were doubtless illegal, and it is well that they were not acted upon.

was settled " by three other acts of parliament, viz. by the statute 25th Henry VIII. c. 21. "Wherein by authority of parliament it is enacted and declared, (directing their declaration to the king) that this your grace's realm, recognizing no superior under God but only your grace, hath been, and is, free from subjection to any man's laws, but only to such as have been devised, made, and ordained, within this realm for the wealth of the same, or to such other, as by sufferance of your grace and your progenitors, *the people of this your realm have taken at their free liberty by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of the laws of any foreign prince, potentate, or prelate, but as to the customed and ancient laws of this realm, originally established as laws of the same, by said sufferance, consents, and customs, and none otherwise.* And by the statutes of 25th Henry VIII. c. 21. 1 Elizabeth, c. 1. and 1 Jac. c. 1. the crown of this kingdom is affirmed to be an imperial crown *." Having cleared up this point, it may be observed, that Mr. Hume, in speaking of the persecuting statutes against papists and puritans, seems to have forgotten the question which he was endeavouring to settle—The power of the crown in regard to the parliament? for his account of what the parliament did, unless he had shewn, which he does not pretend to do, that, in this instance, they were obliged implicitly to obey

* 4th Inst. p. 342. See also 5th part of Reports, p. 1. *et seq.*

the dictates of the sovereign, merely proves that the legislature was not actuated by wisdom or policy, in imposing their principles by cruelty on the people. The same laws might, nay most probably would, have been passed under the purest republic; and, if the presbyterian party had prevailed, they would have devised still more severe statutes against every sect that differed from them, while they reduced the power of the crown to a nonentity. But because they abused their power, could it thence be inferred that they did not possess it?

Mr. Hume properly pronounces the law of the 23d of her reign, "making seditious words capital, as also a very tyrannical statute;" and it was no less impolitic, for, independently of all other objections, it may be remarked that severity ever defeats its object. But the question is, whether the statute sprung from such an overwhelming influence in the crown over both Houses of Parliament, as really deprived them of the legislative power, or from erroneous views of policy in them, or even from personal attachment to the sovereign? That statute made seditious rumours and words, *verbally uttered*, punishable, on the first conviction, with the loss of ears, six months imprisonment, and a fine of £200; and, on the second conviction, it was made felony, without benefit of clergy. Writing and publishing seditious words, &c. were likewise felony, without benefit of clergy. But, besides that the offence was to be tried within a year of its being committed, and proved by two witnesses confronted with the prisoner, the act was to expire with the life of the Queen. It

may be observed, that the very fact of Elizabeth's being obliged to apply to Parliament for protection against personal wrongs, together with the cautious limitations of the statute, disproves Mr. Hume's idea of the unlimited extent of her prerogative.

He has most justly condemned as tyrannical the use which was made of this statute in the cases of Udal and Penry. The whole proceedings against the first were irregular; but, as he had attacked the bishops very bitterly, denied the church of England to be a church, and held that she was destitute of a lawful ministry, sacraments, &c. the clergy eagerly drove on the prosecution. Udal, however, was not executed, every means being in vain taken to prevail upon him to recant, and he died in prison *. Udal had refrained from any personal attack upon the sovereign, and the charge against him was constructive, that he had abused the ecclesiastical government, and consequently her Majesty, as its head; but the case of Penry was very different. Not content with the most scurrilous abuse of the bishops, whom he wished to strip of all their livings, &c. as a troop of bloody atheistical soul-murderers, and sacrilegious church-robbers, &c. fully intending to reserve their revenues for his own party, not satisfied with telling the people that they ought not to wait for authority to establish a proper ecclesiastical government, but to proceed in spite of prohibitions, he published that her Majesty envied her subjects a saving knowledge of the true

Cases of Udal and Penry.

* See Udal's case by himself, in Howel's State Trials. Strype's Annals, vol. iv. p. 21. *et seq.* Life of Whitgift, b. iv. c. 3. Birch's Mem. vol. i. p. 62.

God; that she was yet unbaptised, while her people remained in infidelity, and stood generally condemned to hell; that an honest man could not possibly live under her government in any vocation whatever; that she might as well make a new religion as new laws for religion *, &c. That this language fell under the statute cannot be questioned; but, when a warrant was issued for his apprehension, he fled to Scotland, where he remained for three years. Fired with additional zeal in that country, he at last returned to England with a petition to her Majesty, which he intended to have delivered personally; wherein he declares that "he had cause to complain, nay the Lord and his church had cause to complain, of her government; that her subjects were sold to be bond slaves, not only unto their affections, to do what they would, so that they kept themselves within the compass of established laws, but also to be servants to the Man of Sin (the Pope) and his ordinances; that she ought to rank herself amongst those who opposed the Gospel; that the practice of her government shewed if she could have ruled without the Gospel, it never would have been established, and that it flourished more under her sister's reign than hers." While he thus rails, he shews at the same time in plain terms, that he desired her concurrence to root out every sect but his own †. This also was assuredly seditious within the statute, and was

* Ann. vol. iv. No. 97. Life of Whit. b. iv. c. 3.

† Life of Whit. b. iv. c. 3, 11. Neale, vol. i. p. 559 *et seq.*

calculated to disturb the state; but then it had not been published, and of course was yet no libel. For his former writings he could not be arraigned, as the time limited by the statute was expired, and therefore he was unjustly charged with this, which had been in his custody as yet unpublished. It is said that the queen regretted his death *; but the fury of the prelates exceeded her own.

"It was also," says Mr. Hume, "imputed to Penry by the lord keeper Puckering, that, in some of his papers, 'he had not only acknowledged her Majesty's power to *establish* laws, ecclesiastical and civil, but had avoided the *usual* terms of *making*, *enacting*, decreeing, and ordaining laws, which imply,' says he, 'a most absolute authority.'" Hence the author infers that the queen's power was acknowledged to be absolute; but in this, as in other instances, he only affords a proof of the danger of forming opinions regarding the laws and opinions of any age or country, from insulated passages, and particular expressions. In strict constitutional language, the sovereign is the fountain of all law, and, as it must be known to every one, all statutes bear *in gremio*, to have been made by him, with the advice and consent of the lords spiritual and temporal, and the commons in parliament assembled. When, therefore, in the next reign, the king pedantically claimed absolute power, he was answered that his notion was correct, but that this absolute power could only be exercised by means of his great council the parliament †. In Eliza-

* Neale, vol. i. p. 508.

† See Har. MS. Brit. Mus. No. 737. and No. 1. of the vol. A remonstrance delivered to King James in writing, after the inhibition to the lower House, not to proceed to examine his right to impose du-

beth's time, no one ever pretended that laws could be made by the sovereign without the intervention of the legislature, and the very usual terms of making, enacting, &c. ought to have set Mr. Hume right, while it is somewhat inexplicable how the whole passage referred to should not have had that effect. That portion of the puritanical party to which Penry was attached denied the power of the legislature to make laws about religion, while

ties upon goods and merchandise, with Yelverton's speech against the right arrogated by the king to impose without an act of the legislature. He admits, that there is a supreme power in the king; but argues that his power out of parliament is controlled by his power in it. "Then," says he, "there is no farther question to be made, but to examine where the sovereign power is in this kingdom; for there is the right of imposition. The sovereign power is agreed to be in the king. But, in the king, is a twofold power: when in parliament, as he is assisted with the consent of the whole state; the other out of parliament, as he is sole and singular, guided merely by his own will; and if, *of these two powers in the king*, one is greater than the other, and can direct and control the other,—that is *suprema potestas*, the sovereign power; and the other is *subordinata*," p. 5. He clearly proves, by a vast number of authorities, that the supreme power is in parliament, where only laws, &c. could be made, as well as taxes imposed; then alludes to the conduct of Wolsey, in regard to the benevolence attempted by him, and warns others to reflect on his fate; refers to the act 25 Ed. III. against loans, (a clear proof of Mr. Hume's mistake as to the act of 2 Rich. II.) and to the law of Rich. III. against benevolences; quotes Bracton's words, *Rex est ubi dominatur lex non voluntas*, and alludes to the melancholy condition of France, declaring that there would be as few parliaments in England as there had been in that country, were the right of imposing once acknowledged to be in the crown. The statutes and authorities in favour of the liberty of the subject are gone over at great length. Fortescue is quoted; Commines referred to. See the same speech in Howell's State Trials, vol. ii. p. 477. See also Hakewell's on the same subject, p. 407, *et seq.* See also the case of proclamations, Id. p. 723, *et seq.*, taken from 12 Coke's Reports, 74. Mich. 8. James I. 1610. Had Mr. Hume seen it, he would have avoided some fundamental mistakes which unfortunately run through his history.

See also Raleigh's Dialogue between a Councillor of State and a Justice of Peace.

they confidently asserted that they derived a legislative authority from heaven, which the civil government was bound to ratify. When it was argued against them, that their ecclesiastical government was incompatible with the civil, they plainly avowed, that, if such were the fact, the civil government, which was the result of human policy, ought to be made conformable to the ecclesiastical, which was divine, not the ecclesiastical to the civil. Their ideas about deposing princes too were equally bold. In short, as we have shewn, in the preceding chapter, from the notes of this very lord-keeper Puckering, their notions would have necessarily led to the subversion of the state, while they, who exclaimed against the tyranny of forcing consciences, declared it, at the same instant, to be the duty of the magistrate to root out every sect which dared to impugn their decrees. It was, under this impression, that Puckering drew up his observations in Penry's case; and his real words, which Mr. Hume has neither quoted correctly nor fully, leave no doubt on the point. He endeavours to prove from many grounds, that Penry is not, as he pretends, a loyal subject; but a seditious disturber of her Majesty's peaceable government; and, in the sixth place, he says this appears "by so many of his protestations, wherein he acknowledgeth her Majesty's power only to establish laws ecclesiastical and civil, shunning the usual terms of making, enacting, decreeing, ordaining laws, which import a most absolute authority; *as though her Majesty had no such power, but only a prerogative to establish and ratify*

*such laws as are made to her hand by the omnipotent presbytery, as he and others of his crew have both taught and written* *." The language of Puckering is certainly not commendable, for he might have

* Strype's Annals, vol. iv. No. 116 and 117. In giving an account of the Presbyterian party, I have abstained from quoting the works of their greatest enemies, as Heylin, &c. and I am aware that many of the leaders began to qualify their language, and affect great loyalty,—when they found their weakness, and were exposed to danger. I am also aware, that, as Puckering, in his judicial capacity, opposed them, it may be argued that his testimony ought not to be relied on; and therefore to shew his correctness, I give the following passage from the works of the leading man, Cartwright, which will speak for itself. "It is true," says he, in his reply to Whitgift, "that we ought to be obedient unto the ciuile magistrate which gouerneth the churche of God, in that office whych is committed unto hym, and according to that calling. But it must be remembred, that ciuile magistrates must gouerne it according to the rules of God prescribed in hys word, and that they, as they are nourises, so they be seruaunts unto the churche, so they must remembre to subiect themselves unto the churche, to submit their scepters, to throwe downe their crownes before the churche, yea, as the prophet speaketh, to licke the duste of the feete of the churche. Wherein I meane not that the churche dothe eyther wring the scepters oute of princes' handes, or taketh their crownes from their heades, or that it requireth princes to licke the duste of her feete, as the Pope under thys pretence hathe done;" (from this qualification we should conclude that the first part had some mystical meaning, and that the writer had no idea of the Romish arrogance, but what follows, shews that he also would have been a pope in a different guise;) "but I meane as the prophet meaneth, that, whatsoeuer magnificence, or excellence, or pompe, is eyther in them, or in their estates and commonwealthes, whych dothe not agree wyth the simplicitie, and, in the judgment of the world, pore and contemptible estate of the churche, that that they will be content to lay downe."

"And here commeth to my minde that wherewyth the world is nowe deceiued, and wherewyth M. Doctor goeth about bothe to deceiue him self and others to, in that he thinketh that the churche must be framed according to the commonwealthe, and the churche gouernment according to the ciuile gouernment, which is as much as to say, as if a man shuld fashion hys house according to hys hangings, when

alluded to the parliament; but, while it was soothing to the royal ear, for which this courtier prepared it, it was not unconstitutional, and could not be misunderstood. The queen acted with, not against, the legislature.

Burghley's proposal to erect a new court for the correction of all abuses, &c.

What we have just said, partly explains the language of Burghley, when, in a speech to the council, he proposed that the queen "should," to use Mr. Hume's words, "erect a court for the correction of all abuses, and should confer on the commissioners a general inquisitorial power over the whole kingdom;" "to proceed therein indeed," says Burghley, "as well by direction and ordinary

a in deede it is cleane contrary, that, as the hangings are made fit for the house, so the commonwealthe must be made to agree wyth the churche, and the gouernment thereof wyth her gouernment: For, as the house is before the hangings, and therefore the hangings which come after must be framed to the house whych was before, so the churche being before there was anye commonwealth, and the commonwealth comming after, must be fashioned and made sutable unto the churche, otherwise God is made to geue place to man, heauen to earthe, and religion is made as it were a rule of Lesbia to be applied unto anye estate of commonwealth whatsoeuer."

"Seeing that good men, that is to say the church, are as it were the foundation of the worlde, it is meet that the commonwealthe, which is builded upon that foundation, shoulde be framed according to the churche, and therefore, those voyces oughte not to be heard, this order will not agree wyth our commonwealthe, that law of God is not for oure state, thys forme of gouernment will not matche wyth the pollicie of thys realme." P. 114.

The severity of the sect may be estimated, from what is said in p. 68, 70, 90, 100, &c. in regard to punishments. 2d Reply. In p. 93, he properly approves of the ancient maxim, that as little as possible should be left to the discretion of the judges.

Cartwright was apprehended by a warrant from the commissioners; and it was remarked sarcastically by men of note, that surely the object was to do him honour! Birch's Memoirs, vol. i. p. 62. This requires no comment.

course of your laws, as also by virtue of your Majesty's supreme regiment and absolute power from whence law proceeded." "This proposal," says Mr. Hume, "needs not, I think, any comment. A form of government must be very arbitrary indeed, where a wise and good minister could make such a proposal to the sovereign." The minister who proposes to overturn the laws of his country by an arbitrary act of the chief magistrate, can neither be accounted good nor wise; and, had such an attempt ever been made, Burghley might himself have fallen a sacrifice to his guilty rashness, or would, doubtless, on the first change in administration, have suffered the fate of Empson and Dudley, to whose actions he alluded. But, though the whole speech be in the grossest style of adulation, I do not conceive that it will be difficult to rescue his memory from this imputation, and to prove that he never intended that the sovereign should act without the interposition of the legislature. Our inquiry too, will throw light upon that statesman's plan, which would otherwise be scarcely intelligible. The scheme was first developed by the lord-keeper Bacon in his address, in her Majesty's name, to both Houses at the dissolution of parliament, in the thirteenth of her reign. After adverting to the state of the country, and shewing that inquests were overborn, the guilty acquitted, and the innocent condemned, and the laws, which were good of themselves, made "instruments of all injuries and mischiefs," by the very individuals who were selected by the prince to enforce justice throughout the

kingdom, he intimates that there should be a triennial visitation of all temporal officers and ministers by commissioners nominated by the queen, upon the principle of the visitation of the church, who should be authorized "to try out and examine by all good ways and means, the offences of all such as have not seen to the due execution of the laws, and according to the offences so found and certified, to be sharply punished without omission or redemption *." The scheme, which the lord keeper

* D'Ewes, p. 153. We have already brought forward much evidence regarding the state of justice in those times; but the reader may, perhaps, still excuse the following, taken from the anonymous answer to Knox's blast, published in 1559, entitled, "An Harborrow for faithful subiects," and written by John Aylmer, afterwards Bishop of London. He shews that the English laws excelled others, and particularly the civil, in respect of the trial by jury in the place of racking to extort evidence, a practice which he strongly condemns, (another proof of Mr. Hume's mistake on the subject;) yet of the trial by jury, he says, "But in deede at these dayes it is growen to great corruption, and that thorowe one speciall means, or two, which be these. If there be any noble man dwellinge in the countrey either a duke, a marques, an earle, or baron, he shall lyghtlye have in his retynewe all the cobbes in the countrey, which be the questmongers, and if any matter be touching him, his man, or his frende, whether it bee a cryme capitall, or nisi prius, sent downe for landes; the case shall wey as he wil. For his deteynors must needes haue an eye to my lorde, though they should go to the deuill for it: and so be some innocents knyt up; and some offenders delyuered, some titles of inheritaunce lost, against al iustice and right." He speaks then of the corruption of sheriffs, and says justly, "This corruption of it be not loked to, will make this order, which was the best that could be, the wickedest that can be." N.B. the work is not paged, but see the titles, "Against racking," "The Questmongers, &c." on the margin. I suspect strongly, from such a state of things, that the trial by jury, though warmly esteemed by the high classes, was not at that period, much liked by the middling and lower. Elizabeth, therefore, by proposing such a scheme as the visitation, bespoke respect for the great

had thus intimated at the dissolution of that Parliament, he proposed, in the Queen's name, at the opening of the next, but he introduced the topic by telling them, that "he left it to their judgments *." Had Elizabeth's influence been really so great in parliament as has been imagined, she could have had little difficulty in carrying a measure which she appears to have so much desired; but it struck too forcibly against the power of the aristocracy to be listened to, and it never was heard of again till about the year 1594, when Burghley gratified his mistress by the speech referred to. It cannot be imagined, however, that he could advise her to attempt a measure without Parliament, which she could not accomplish with it; and, therefore, we must presume, that her absolute power was to be exerted through her grand council. Elizabeth was so pleased with the speech, that she desired a copy of it; but the scheme seems never to have been thought of more †.

body of the people, and a desire to protect them from the power of the aristocracy: But the latter clung to a system which gave them such influence.

* Id. p. 194.

† The whole of Burghley's speech is in the grossest strain of adulation, for that celebrated individual, though a great statesman, was a thorough courtier, and he does not advise that the thing should be immediately attempted. "How the time fitteth now for it," says he, "I know not, neither is it meet for me to aspire thereunto." I should conceive that, at the council board, men meet for business, not to make speeches, and that Burghley in his general conduct must have done so; but this is a mere harangue without point or immediate object, flattering the Queen, yet enigmatical. Strype's Annals, vol. iv. No. 164.

We have now examined the grounds upon which Mr. Hume conceived that the English government bore some resemblance of that of Turkey, as well as given an account of the particular institutions and usages of that period; and it remains to make a few remarks upon his assertion, that the established principles of the times, attributed to the prince such an unlimited and indefeasible power, as was supposed to be the origin of all law, and could be circumscribed by none. In support of this statement, he refers to the homilies which, he observes, inculcate absolute obedience; and thence he concludes, that people complained with small reason in the next age, "because some court chaplains were permitted to preach such doctrines; but there is," continues the historian, "a great difference between these sermons, and discourses published by authority, avowed by the prince and council, and promulgated to the whole nation." Indeed, we must admit, that there was a decided difference in the cases. The homilies against disobedience and rebellion were prepared in consequence of, and immediately after, the Northern rebellion, when the fears of the best patriots alarmed them with the idea of an overturn of the state by a religious faction, and when, therefore, they desired the assistance of religion to support the whole frame of the civil government, which zeal of a different kind would have torn to pieces*. The Queen was not

Sentiments of the age regarding the English constitution.

* Strype's Annals, vol. i. p. 403.

then attempting to subjugate the nation by acting without the concurrence of parliament; but openly avowed herself its head. In the next age, the court chaplains preached up damnation to those who pretended to resist the prince in assuming to himself the whole powers of the legislature, after he had quarrelled with his parliaments: Nor were they barely permitted to preach thus, but keenly encouraged in that pious undertaking. We have already shewn that, instead of that tameness of spirit which the historian has attributed to the age, there was a very numerous party, whose doctrine savoured deeply of republicanism, and that their writers maintained very bold sentiments about deposing princes.

The learned author has said, that the English were not aware of enjoying any political advantages beyond their continental neighbours, and has remarked, that he has met with no writers that speak of the English government as any thing else than an absolute monarchy. But, surely, his research had been limited, or his inattention great, for proofs of this are to be found in most writers of the age. Fortescue's work, *De Laudibus legum Angliæ*, was printed in Henry VIII's reign, and was then referred to by lawyers*, nay was even quoted from the bench in Mary's reign†: in 1567, an edition in Latin and English was published, and dedicated by the translator to one of the judges of the

* Prolog. Johan. Rastall in laudem Legum, Anno 5 Henry VIII. to Le Liv. des ass. en temps du Roy Edward III.

† To shew the meaning of a word. Plowden's Coms. Case of Buckley. 1 Ph. & M. vol. i. p. 125. Edit. 1816.

Queen's Bench; and, in 1599, the translation was published alone, with the following title, "a Learned Commentary of the politic laws of England, wherein, by most pithy reasons and demonstrations, they are plainly proved to excel, as well the civil laws of the empire, as also all other laws of the world; with a large discourse of the difference between the two governments of kingdoms, whereof the one is only regal, and the other consisteth of regal and politic administration conjoined *." Did no other document remain, which, fortunately is not the fact, this of itself would refute Mr. Hume's notion. We have already referred to Smith's Commonwealth, and to Hayward's history, and we shall not return to them. Many passages might be quoted from various works, published in Elizabeth's time, but we shall content ourselves with the following: Aylmer, afterwards Bishop of London, in the tract which he published anonymously in answer to Knox's First Blast of the Trumpet against the Monstrous Regiment of Women, defends female government in England expressly on the principle of the superiority of the English government, where the laws governed the magistrate, not the magistrate the laws. "Well," says he, "a woman may not reigne in England: better in England then any where, as it shall wel appere to him that without affection will consider the kinde of regiment: whyle I conferre ours with other as it is in it selfe, and not maymed by usurpacion, I can fynde none either so good or so indifferent.

* Biog. Brit. and Chalmers' Big. title Fortesc.

The regiment of England is not a mere monarchie, as some for lacke of consideracion thinke, nor a mere oligarchie, nor democratie, but a rule mixte of all those, wherein ech one of these have or shoulde haue like authoritie. Thimage whereof, and not the image, but the thinge in dede, is to be sene in the parliament hous, wherein you shal find these 3 estats. The king or quene, which representeth the monarche. The noble men, which be the aristocratie; and the burgesses and knights the democratie. The verye same had Lacedemonia, the noblest and best city gouerned that euer was; thei had their kings, their senate and Hippagretes, which wer for the people. As in Lacedemonia none of these could make or breake lawes, order for warre or peac, or do any thing without thother, the king nothinge without the senate and commons, nor either of them or both withoute the king, (albeit the senate and the ephori had greater authoritie then the kinge had.) In like maner, if the parliament use their priuileges, the king can ordein nothing without them. If he do, it is his fault in usurping it, and their follye in permitting it: Wherefore, in my iudgement, those that in King Henry the viii. dais would not graunt him that his proclamacions shuld have the force of a statute, were good fathers of the countri, and wurthy commendacion in defending their liberty."—"But to what purpose is all this? To declare, that it is not in England so daungerous a matter to have a woman ruler as men take it to be."—"If, on thother part, the regiment were such, as all hanged

uppon the Kinge's or Quene's wil, and not upon the lawes wrytten; if she might decre, and make lawes alone, without her senate; if she iudged offences according to her wisdome, and not by limitation of statutes and laws; if she might dispose alone of war and peace; if, to be short, she wer a mere monark, and not a mixte ruler, you might, peraduenture, make me to feare the matter the more, and the les to defend the cause. But the state being as it is or ought to be, (if men wer wurth theyr eares,) I can se no cause of feare *." He afterwards presents a picture of the wretchedness of the French, and compares their condition, and that of other states, with the situation of England †. Thus much for Aylmer:—Cartwright, in defend-

* An Harborowe for Faithful Subjects, title on margin—"It is lesse daunger to be gouerned in England by a woman than any whore ola."

† "The husbandman in Fraunce, al that he hath gotten in his whole life, loseth it upon one day. For when so euer they haue warre, (as they are neuer without it,) the king's soldiers enter into the poore man's house, eateth and drinketh up al that euer he hath, geueth their horse his corn, so longe as it lasteth, without paying a farthinge, and neuer departeth so long as there is any thing left in the hous. This was the maner: but this king hathe amended it with the wurse, for his soulditers come not thither, but his rakehels thoffiters, which pare them even to the bones. The pore man neuer goeth to the market to sel any thing, but he paieth a tolle, almost the half of that he selleth; he eateth neither pigge, gose, capon, nor hen, but he must pay as much for the tribute of it there as it might be bought for here. O unhappy and miserable men that liue under this yocke. In Italy, they say, it is not much better; the husbandman be there so rich, that the best coate he weareth is sacking, his nether stockes of his howe be his own skin, his diet and fare not very costly," &c.—"In Germanie, thoughe they be in some better case than thother, yet eat they more roten than flesh," &c.—"Now," addressing himself to his countrymen, "compare them with thee, and thou shalt see howe

ing his system of Church government, which he, of course, calls divine, says, "the Churche is gouerned with that kind of gouernment whiche the philosophers, that wryte of the best commonwealths, affirme to be the best. For, in respecte of Christe the head, it is monarchie, and in respect of the auncients and pastours that gouern in common, and with lyke authoritie amongst themselves, it is an aristocratie, or the rule of the best men, and, in respecte that the people are not secluded, but have their interest in Churche matters, it is a democratie or a popular estate. An image, whereof appeareth in the pollicie of thys realme, for, in respecte of the Queen her maiestie, it is a monarchie, so in respecte of the most honourable counsel, it is an aristocratie, and having regard to the parliament, which is assembled of all estates, it is a democratie *."

Harrison, who published in 1577, gives this account of the Parliament. "This house hath the most high and *absolute* power of the realme; for there-

happye thou arte. They eat hearbes; and thou beefe and mutton: thei rotes; and thou butter, chese, and egges. Thei go from the market with a sallet; and thou with good fleshe fill thy wallet. They lightlye, neuer see anye sea fish; and thou hast thy belly full of it. They paye till their bones rattle in their skin; and thou layest up for thy sonne and heir." Id. Title on margin—"How the French Pezantes bee handled."

Dr. John Ponet, in "A Short Treatise of Politique Pouuer, and the true Obedience which Subjects owe to Kynges," enters upon an inquiry into the origin of political authority, its absolute or limited nature, and the limits of obedience, and ever maintains the right to depose and punish tyrants. Yet this doctor was, first, bishop of Rochester, and afterwards bishop of Winchester, under Edward VI.

* Reply to Whitgift, p. 35, and also p. 145.

by kings and mightie princes haue from time to time beene deposed from their thrones; lawes either enacted or abrogated; offendors of all sorts punished; and corrupted religion either disannulled or reformed.—To be short, whatsoeuer the people of Rome did in their *centuriatis* or *tribuitiis comitiis*, the same is and may be doone by authoritie of our parlement house, which is the head and bodie of all the realme, and the place wherein euerie particular person is intended to be present, if not by himselfe, yet by his aduocate or attornie. For this cause also any thing ther enacted is not to be misliked, but obeied of all men without contradiction or grudge*." No language can be stronger than this; but, as Mr. Hume has brought together every circumstance which could convey a contemptible idea of Parliament, we shall make a few observations on that point, and produce some instances to prove the general spirit that pervaded that assembly.

Conduct of Parliament, with the ideas entertained by that assembly of their powers and privileges.

In the previous chapter, we have traced the causes of the influence which the crown then enjoyed in the state; and it remains to say, that Elizabeth having had certain powers in regard to religion devolved upon her, objected to the introduction of bills which tended to abridge her authority; and, in the course of her reign, even sent members to the Tower who disobeyed her injunctions on this head, as well as some who insisted

* Harrison's Description of England, in Holinshed, vol. i. b. ii. c. 8. p. 173.—See Plowden's Coms. title Prerog. regarding the power of the Crown.

upon her marriage, and her naming a successor, &c.* That the proceeding was unconstitutional, no one doubted; and, in the 13th of her reign, when she first attempted an encroachment upon the privileges of the Commons, by ordering a member to abstain from attendance in his place, till he received farther orders, the circumstance created such a flame in the lower house, that she instantly restored the member; but her popularity and influence enabled her to repeat the measure, and even to send the members to the Tower, who, not choosing, at such a moment, to contest the matter with the crown, submitted to the hardship.

In the year 1566, Mr. Onslow, then speaker of the Commons, *in his address to the throne* at the conclusion of the session, pronounces a panegyric upon the common law. "For," says he, "by our common law, although there be for the prince provided many princely prerogatives and royalties, yet it is not such, as the prince can take money or other things, or do as he will at his own pleasure, without order; but quietly to suffer his subjects to enjoy their own, without wrongful oppression, *wherein other princes, by their liberty, do take as pleaseth them.*"—"He tells her, that, as a good

* This stretch of prerogative may be said to have been as directly against the liberty of the subject in his private capacity, as contrary to the privileges of Parliament, and, therefore, seems to contradict what we have said about the power to imprison; but the fact is, that these members did not try the matter at law, but submitted to injustice—a course, perhaps, the most prudent under all circumstances. The courts of justice, therefore, still remained uncontaminated with any precedent contrary to law.

prince, she was not given to tyranny contrary to the laws, had not attempted to make laws contrary to order, but had orderly called this parliament, who perceived certain wants, and thereunto had put their helping hand, &c."* Onslow was, at the very time, though prolocutor of the Commons, the Queen's solicitor†; and his speech was so far from giving offence, that, while the Commons were reprehended for having trenched upon the prerogative, by questioning her right to grant patents for monopolies, &c. it was pronounced wise and eloquent. To smooth down and justify the reprimand, the Lord Keeper, in her Majesty's name, tells the Parliament that "she meant not to hurt any of their liberties‡." At the opening of the next Parliament, in the thirteenth of that reign, both houses were informed from the throne, that the first reason for calling them, "was to establish or dissolve laws, as best should serve for the governance of the realm;" "and that, because in all councils and conferences, first and chiefly there should be sought the advancement of God's honour and glory, as the sure and infallible foundation whereupon the policy of every good public weal is to be erected and built, &c.—therefore they were to consider whether the ecclesiastical laws, concerning the discipline of the church, be sufficient or no, and, if any want should be found, to supply

* D'Ewes, p. 115.

† Id. p. 96. & 121. Onslow alleged, that, as solicitor, he was not fit to have a place in the House, far less to be speaker. Ib.

‡ Id. p. 115.

the same *." Now, it will not be forgotten, that it is chiefly on religious matters that Elizabeth's government has been censured, and it has been alleged that a divine right on that head was arrogated by the crown. The lord keeper, who delivered the royal address, reminded the parliament in no less liberal terms of their duty, in reforming, abrogating, or altering the temporal laws. It was even treason by an act of that Queen to deny that parliament had power to determine the succession, or other matters regarding the crown. "It were horrible to say," observed Mr. Mounson, in that very session, "that the parliament hath not authority to determine of the crown, for then would ensue, not only the annihilating of the statute 35 Henry VIII., but that the statute made in the first year of her majesty's reign, of recognition, should also be void." "For the authority of parliament," said Serjeant Manwood, on the same subject, "it could not, in reasonable construction, be otherwise, for who should deny that authority, denied the Queen to be Queen, and the realm to be a realm †." It was during this session, that Mr. Strickland, for having introduced and pressed a bill about religion, which was said to be injurious to the prerogative, was summoned before the Council, and commanded to attend their farther pleasure, and in the meantime not to return to the House; but, as has just been said, this infringement of their privileges was taken up with so high a spirit, that

* D'Ewes, p. 137. † Id. p. 161, 165

though the ministers affected to defend the restraint, the member was restored on the following day*. Mr. Yelverton, in arguing for the liberty of the House, and representing the danger of the precedent, if they did not vindicate their privileges, said, "that all matters not treason, or too much to the derogation of the imperial crown, were tolerable there, where all things came to be considered of, and where there was such fulness of power, as even the right of the crown was to be determined, and by warrant whereof we had so resolved. That to say the parliament had no power to determine of the crown, was high treason. He remembered how that men are not there for themselves, but for their countries. He shewed it was fit for princes to have their prerogatives; but yet the same to be straitened within reasonable limits. The prince, he shewed, could not herself make laws, neither ought she, by the same reason, break laws †." He concluded with defending Strickland's bill. Now, though one member argues that the House ought to petition the throne as the only way to obtain redress, not one courtier rose to object to these general principles. Peter Wentworth, in the 18th of that reign, was committed to the tower by the House, for undutiful expressions towards the Queen; but though he defended what he had said, instead of shewing regret for it, her Majesty interposed in his favour, and restored him to his place. Now, it

* D'Ewes, p. 175, 176.

† Id p. 175. Liberal speeches, this session, were made by many members.

is remarkable, that the general positions which he laid down, as that the prince must be under the law, for the law makes him king, &c. never were impugned even by the council *.

* Wentworth's speech commences at p. 236, and extends to 241 of D'Ewes' Journal. That the reader may be apprised of the irreverend words spoken of her Majesty, upon which he was committed by the House to the Tower, we shall transcribe some passages. He says "that God was, the last Session, shut out of doors;" but what fell out of it, forsooth? his great indignation was therefore poured upon this House, for he did put it into the Queen's heart to refuse good and wholesome laws," &c. "It is a dangerous thing in a prince to abuse his or her nobility and people, and it is a dangerous thing in a prince to oppose or bend herself against her nobility and people. And how could any prince more unkindly intreat, abuse, oppose herself against her nobility and people than her Majesty did the last Parliament?" N. B. She refused her assent to certain laws. "Is this a just recompence in our Christian Queen for our faithful dealings? The heathen do requite good for good, then how much more is it to be expected in a Christian prince? And will not this her Majesty's handling think you, Mr. Speaker, make cold dealing in any of her Majesty's subjects toward her again? I fear it will. And hath it not caused many already, think you, to seek a salve for the head that they have broken? No estate can stand where the prince will not be governed by advice. And whatsoever they be that did persuade her Majesty so unkindly to intreat, abuse, and oppose herself against her nobility and people, or commend her Majesty for so doing, let it be a sure token to her Majesty, to know them for traitors and underminers of her Majesty's life, and remove them out of her Majesty's presence and favour." P. 239.

Whoever will read the examination of Wentworth by a Committee of the Commons, p. 241. *et seq.* see p. 244. will be satisfied, that the ground of commitment to the Tower regarded these and some other expressions, and that "the fine spirit of liberty" which his speech breathes, was not the cause. This happened in the 18th of the Queen.

See the proof of the spirit of Paul Wentworth in the 1566. p. 148. See farther, too, the manly spirit of Parliament in discussing matters, notwithstanding several restrictions. P. 130.

No one dared to answer in the negative the constitutional queries of Wentworth in the 28th and 29th of the Queen, who thought the liberties of the House infringed.

We have perhaps said enough, but as the learned historian has repeatedly stated that the English did not suppose that they enjoyed superior privileges to their neighbours, we shall farther observe, 1st, That if the people enjoyed privileges, as it is evident they did, it would not lessen our opinion of their enjoyments, that they were unacquainted with the situation of the continental states, and that it would be incumbent on Mr. Hume to prove that France enjoyed any thing of the kind. 2dly, That the wretched condition of France, governed and taxed at the will of the prince, and oppressed by foreign military, seems to have been a fact with which most men were acquainted and that proofs of it not only occur in books, but in the journals of Parliament. Sir Humphrey Gilbert, in support of the prerogative to grant patents, advised the house, in language similar to what was adopted in a future reign, to abstain from such topics, lest "her majesty might look to her own power, and thereby finding her validity to suppress the strength of the challenged liberty, and to challenge and use her power any way, to do as did Lewis of France, who, as he termed it, delivered the crown there out of wardship*, which the said French king did upon like occasion. *He also said that other kings had absolute*

* Mr. Hume in the body of his history quotes this very speech; but he, unfortunately, stopt at the word *wardship;* and thus overlooked the rest of the passage, which might have prevented him from taking so erroneous a view of the English government in that age. While, too, he alludes to Wentworth's observations on it, he overlooks the remarks of another member.

*power, as Denmark and Portugal*, where, as the crown became more free, so are all the subjects thereby, the rather made slaves*." This speech was disliked, but no notice was taken of it at the time. At the next meeting of Parliament, however, on a question about the residence of burgesses within the boroughs they represented, a member, after stating to the House that it belonged to them "to consider of all, and, as occasion may serve, to alter, constitute, or reform all things as cause should be," alludes to Gilbert's speech in the following terms: "We know that, such as have spent their whole time in service, or have seen only the manner of government of other nations, and can tell you how the Crown of France is delivered out of wardship, or otherwise tell a tale of the King of Castile and Portugal, how they, in making laws, do use their own discretion, the King of Denmark useth the advice of his nobles only, and nothing of the commons; or can point you out the monstrous garments of the common people in some parts of Germany, or the mangled commonwealth of the allies, or shadows of the great cities, which now are to be seen in Italy; surely all those men, except they know also our own homes, are not to be trusted to conclude for our home affairs†." Wentworth, on a future day, declared Gilbert's speech to be an injury to the House, and reprobated that individual in the coarsest terms, for his disposition to flatter and

* Id. p. 168. † D'Ewes, p. 169.

fawn upon the prince, comparing him to the chamelion, which can change itself into all colours save white; "even so," said he, "this reporter can change himself into all fashions save honesty *." No evidence can be more direct or complete than this.

We have now travelled over a vast variety of ground, and it must be apparent that, though there were some institutions, as the star-chamber, &c. not consonant to the genius of a free government, and occasional proceedings of a dangerous kind, the grand constitutional principles were clearly defined, as well as recognized by the monarch in the general course of administration †.

* P. 175.

† In note D. the reader will find some additional matter upon this subject, and a more particular examination of Mr. Hume's statements. We have reserved for that note also, some observations regarding the opinions of the grand reformers on the continent, about civil liberty, with the sentiments prevalent in Scotland.

In a note to p. 412. ch. 44. Mr. Hume has made some remarks about the practice of addressing and serving the monarch on the knee, &c. and says, that Elizabeth's "successor first allowed his courtiers to omit this ceremony; and, as he exerted not the power, so he relinquished the appearance, of despotism." But I cannot discover on what grounds he has paid this compliment to James, who, he himself confesses, arrogated a divine uncontrolled right in his language, which his predecessors had not done. We learn from Sully, that James did not omit this ceremony; for Sully declares that he was not a little surprised at the service on the knee, when, as French ambassador, he dined with James, (Mem. de Sully, tom. iii. p. 273. edit. à Paris, 1814.) and it is incontestible, that Charles exacted it, and every observance in its utmost rigour. When the trial of that prince was determined on, the Council of War ordered the ceremony to be withheld; (Whitelocke, p 365,) and Charles is represented by his attendant, Herbert, to have felt it severely, saying, that he was the first to whom

that mark of respect ever was denied, and that in former times, even subjects of high degree always received it. Herbert, p. 109. Now it is utterly inexplicable how Mr. Hume should have missed this, for in describing the situation of Charles on that occasion, he says, "all the exterior symbols of sovereignty were withdrawn, *and his attendants had orders to serve him without ceremony.* At first he was shocked with instances of rudeness and familiarity, to which he had been so little accustomed. *Nothing so contemptible as a despised prince* was the reflection which they suggested to him. But he soon reconciled his mind to this as he had done to his other calamities." Thus, it was a calamity to him to be deprived of a ceremony which, in Elizabeth, it was tyranny to exact. Even Strafford, when Lord-Deputy of Ireland, requested an order, that "on days of meeting none but noblemen should come farther than the drawing-chamber, that the gallery should only be free for those of the council, and that all their servants should stay in the great chamber, where they and all others were to be bare, as well as in the presence, there being there a state as well as in the other." Straf. Let. and Dis. vol. i. p. 200 and 201. Bastwick's account of the reverence exacted by the bishops in Charles I.'s time, as well as of the pomp and state assumed by them, is probably caricatured; but the picture bears internal marks of having been taken from the life; and it is really ridiculous. See his Litany. The fact is, that in former times, the manners were remarkably severe. Sons, arrived even at manhood, are represented as standing uncovered and silent in their father's presence; daughters, as standing at the cupboard in their mother's, or only kneeling on a cushion. Sully himself, though he was surprised at the service on the knee at the English court, reposed, while his family stood at a distance. Henry, vol. xii. p. 353. With regard to kneeling, though I confess I have attended little to these trifles, I apprehend, from several passages I have met with, that it was the old fashion, for which we have substituted bowing, and which is yet retained by the ladies, for the courtesy is just that ceremony mutilated, as bowing is a mutilated kind of prostration. Every one remembers the following passage in Shakespeare:

"Off goes his bonnet to an oyster-wench;
A brace of dray-men bid, God speed him well,
And had the tribute *of his supple knee.*"

## CHAP. III.

*Tracing the Progress of Society, and investigating the various circumstances which affected the Constitution of England during the Reign of James I.*

We have seen that, throughout all the fluctuations of society, the grand principles of the constitution had been still maintained. Circumstances had conferred great influence upon the crown; but it had operated through the ancient channels of the government, and had thus preserved for the other branches of the legislature the right of vindicating public privileges, and redressing grievances, without innovating upon established principles.

Though the free importation of manufactures, the laws against trading in grain, the injudicious attempts of the legislature to regulate the wages of labour, the enforcing of long apprenticeships to the most vulgar trades, and the abominable practice of granting monopolies, had impeded the progress of improvement, there had been still a great advance. The woollen manufactures flourished in a high degree; and some towns had risen to considerable opulence by commerce. Crowded streets, filth, &c. all evils in themselves, were yet attended with certain benefits to posterity; for, by occasioning plagues, and thus sweeping off a large

portion of the population, they raised the wages of labour, and consequently the profits of stock, and, by unexpectedly opening rich successions, enabled many, by the accumulation of capital, to extend their concerns, and improve their machinery. Leases of large tracts had improved the wealth of the country inhabitants*; and the demand for home manufactures, as well as for the articles of commerce, bearing a proportion to the increasing opulence, necessarily afforded employment to a number of hands, and more widely diffused wealth. While society was thus in a progressive state of improvement, in spite of much impolicy, the national prosperity was rapidly promoted by religious persecutions on the continent. Antwerp, long famous for her manufactures, had annually furnished England to a large amount; but having been sacked in the year 1585, through the furious bigotry of the Spanish court, she no longer outrivaled the English in their own market, while a great portion of her rich and industrious inhabitants, driven from their native city, sought an asylum in that country, into which they imported their skill and capital†. Many articles formerly supplied by foreigners, were now provided at home. The demand for manufacturing labour therefore increased, and, as the number who could pur-

* This is evident from Harrison; and from what Spencer says of leases in his Account of Ireland, as well as from the information we derive from various sources, I apprehend that leases were more common in England in that age than now.

† Anderson's Hist. of Commerce, vol. ii. p. 158.

chase the necessaries of life augmented, a new spring was given to agriculture by the home consumption of the produce of the soil; while the improved state of the country population reacted in giving additional employment to the manufacturing classes.—The general prosperity was accelerated, likewise, by emigration, particularly to the American colonies, which were established under James, and which operated not only in opening an outlet to the superfluous population, but in creating a new market for manufactures.

Towns give the tone to public feeling: there only genius, though elsewhere exerted, meets with its reward. Thither resort men of intelligence and independent fortunes, who naturally canvass the measures of government, and acquire a bolder and more decided character, by the collision of sentiment. The citizens or burgesses, too, daily rising into greater independence, cultivate mental improvement, and, by the habits of public business which they acquire, in conducting the government of their city, or burgh, are naturally roused into attention to the great national affairs. This natural course of things may be counteracted; but, as in England, while the constitution was more popular than in other states, there was no standing army, and besides, after the church lands were confiscated, there remained in the crown few of those sources of influence that make it the interest of certain classes to support the administration in acts that otherwise they would oppose, the public spirit was daily invigorated by national prosperity.

The aristocracy having been reduced to a subjection to the laws, the inferior ranks had no longer an interest to encourage and support an arbitrary interference in the Crown, which was calculated to shield them from subordinate tyranny, while the wretched country population, who, cast out of employment and subsistence, had deranged the order of society, and confirmed the power of the executive, having now been either employed or gradually consumed by famine, ceased to molest, in a violent degree, the independent inhabitants, and thus no longer allowed them to view any irregularity in the executive as a necessary evil, nor prevented a union of all classes for the security of their rights. As religion had been instrumental in vastly extending the influence of the crown, it now operated in a contrary way. The rights to church lands being confirmed, the aristocracy, who perceived that they had nothing more to expect from that quarter, were no longer alarmed by their fears of losing their lands, nor seduced by their cupidity of acquiring more, into an undue desire of supporting any proposition from the throne. The principles of the Reformation also were too deeply rooted to make people tremble with terror at the idea of a popish prince, though they still were justly apprehensive of such an evil, nor to regard a Protestant monarch with that reverence which the peculiar situation of Elizabeth inspired. Innovation, too, having become familiar, the higher classes did not, as formerly, recoil with horror at every new tenet, while, having imbibed the principles of the puritan party to the extent at least of ceremonies and wor-

ship, they listened with less attention to the cry of the prelates about the tendency of popular opinions to violate the rights of property—particularly when they perceived that these High Churchmen reviled as rebellious, the justest opposition to the sovereign, and were inclined to serve the crown at the expence of every constitutional principle.

As the public spirit rose, the crown became more dependent upon parliamentary supplies, which, consequently, conferred greater influence upon that organ of the national voice. For the royal domains, which, in ancient times, had supported the ordinary expenditure of the monarch, had been successively much alienated, not, in a trifling degree by Elizabeth herself, and no fresh plunder of the church promised to replenish the royal coffers. At the commencement of his reign, James endeavoured to procure a law prohibiting further alienations of the crown lands; but the Commons, who either grudged supplies, expected a share of the domains, or foresaw the political consequences, refused the bill, and the king himself was far from pursuing in practice what he had anxiously desired to restrict himself to by law*. While the permanent revenue of the crown was thus daily diminished, a more expensive establishment was introduced.

From all these circumstances, the dynasty of the Stuarts opened a new era in the Government, and their chance of enjoying the affections of the community, must have depended on their yielding to the more liberal notions of the times, and

* See Raleigh's Prerog. of Parliaments, p. 13.

never at least exceeding the limits of the constitution. But a free spirit in the people is apt to inspire an opposite one in the governors, who mistaking the expression of the public feeling for its cause, conceive that illegal severity against every indication of freedom, will quell the temper they dread; and therefore, recal to mind as a precedent for their ordinary administration, every insulated irregularity of former times, attributing obedience to any rare act of severity, when in truth the submission to the act arose from the train of events that had encouraged it. This misguided policy is not confined to princes: Even statesmen in power are frequently the last to observe the changes in society which necessarily affect the Government. Raised above the people, and occupied with intrigues for place, they either despise, or are ignorant of, the passions which agitate the general mass, and refuse concession till the hour of conciliation is past. An ambitious priesthood, who, with as much injustice, are more impolitic, perceiving that external pomp and ceremonies impose on mankind, cannot renounce them when they provoke disgust instead of veneration *. When, therefore, a prince evinces a disposition to tyrannize, he seldom wants evil counsellors and coadjutors; and, as James shewed the first, he was plentifully supplied with the last.

At the accession of that monarch, though there was a party hostile to the hierarchy, the bulk of

* Lord Clarendon remarks, that "Clergymen understand the least, and take the worst measure of human affairs, of all mankind that can read or write."—Life, vol. i. p. 34.

the Protestant community adhered to it, and would have been fully satisfied with a dispensation from certain ceremonies, which too forcibly reminded them of the religion they had renounced. This they had expected from the new monarch, whose Presbyterian education afforded a rational ground of hope: But the very circumstance on which they relied, had been productive of opposite consequences. The Scotch Clergy, full of the highest ambition, had converted the pulpit into a theatre for political declamation; and James had imbibed the bitterest hostility to every thing which approached to the Presbyterian form of ecclesiastical establishment, declaring that, under it, Jack and Tom, and Dick and Will, presumed to instruct him in affairs of state. It was his misfortune to have received, under the tuition of Buchanan, more literature than he had understanding to digest, and therefore, while he could lay down general propositions with considerable force, which seemed to imply an extent of intellect above the ordinary standard, the real effect of his acquirements was insufferable pedantry and self-sufficiency; proving that his general conclusions were borrowed from others, and foreign to the indigenous productions of his own mind. Hence, however, he imagined himself possessed of supereminent wisdom, and though his power was circumscribed in most respects, while king of Scotland only, he supposed himself likewise the centre of all legitimate power. Under the dominion of such feelings, he regarded all Protestant non-conformity, as importing a leaven

of stubborn republicanism, and therefore resolved to allow not the slightest toleration to that class—a resolution in which he was confirmed by the impious flattery of the Prelates, who attributed to him, at the conference at Hampton Court, immediate inspiration from heaven *. The non-

* In his opening speech at the Conference, the King congratulated himself on having reached the promised land, where he was not "as elsewhere, a king without state, without honour, without order, where beardless boys would brave him to the face." Fuller's Ch. Hist. b. x. p. 8. The Government of James has been excused on the principle of his having merely imbibed the principles prevalent in his time: But they were confessedly not prevalent in Scotland, where he had been educated, and where he wrote his book, entitled, "The Law of Free Monarchies," which, in every page, contains the most detestable principles; nor had he learned them from his preceptor Buchanan, whose very books he eagerly put down, not on account of the reflections against his mother, which would have been both natural and excusable, but merely for the political sentiments.—At the conference, he says, "a Scots Presbytery agrees as well with Monarchy, as God and the Devil; then Jack and Tom, and Will and Dick, will meet and answer me and my council. Therefore, pray stay one seven years before you demand that of me, and if then you find me grow purly and fat, my windpipe stuffed, I will perhaps hearken to you, for that Government will keep me in breath, and give me work enough. How they used the poor Lady, my mother, is not unknown, and me too in my minority." His maxim was, no Bishop, no King; and in conclusion, he told the Puritans,—"If this be all your party hath to say, I will make them conform themselves, or else harry them out of the land, or else do worse." The Geneva translation of the Bible, had, in the preceding reign, passed through twenty or thirty editions, but James condemned it strongly, in consequence of some notes which favoured the right of the people to correct the prince, and he says, "never tell me how far you are to obey."—James shewed some shrewdness in this business, but a want of dignity truly astonishing. The conduct of the prelates was detestable. Whitgift said, he verily believed the king spoke by the special assistance of God's spirit. Bancroft fell on his knees and said, "I protest my heart melteth for joy, that Almighty God, of his singular mercy, has given us such a king, as since Christ's time hath not been." The Chancellor Egerton was more excusable in saying, that he never saw the King and the Priest so fully

conforming were persecuted, everywhere ridiculed, and treated with the greatest contempt; a species of persecution which has been thought the most severe towards religionists, but which, in fact, operates with equal force upon mankind in general; and the moderate amongst the non-conformists, whose views extended no farther than to an abrogation of certain ceremonies, perceiving themselves designedly confounded with the party who were hostile to the hierarchy, naturally fell into their sentiments: Men cannot long venerate a system whence they derive nothing but persecution. They were confirmed too in their religious principles by the neighbourhood of the Scots, and in both their religious and political, by the success of the Dutch Commonwealth. The same policy that actuated the court in such intolerance towards the non-conforming Protestants, occasioned a partiality to the Catholics *, which excited disgust and

united in one person. Howel's State Trials, vol. ii. Fuller, b. x. Neal's Hist. vol. ii. p. 18.

The Puritans were not even listened to, though specially summoned to argue the case, and Mr. Hume sneers at them for complaining, as if philosophical candour was to have been expected. But hear what the Solomon of the age writes on the subject, to Mr. Blake, a Scotchman. "They fled me so from argument to argument, without ever answering me directly, (ut est eorum moris,) that I was forced to tell them, that if any of them, when boys, had disputed thus in the college, the Moderator would have fetched them up, and applied the rod to their buttocks." Neal, vol. ii. p. 19. It is quite evident that this second Solomon, ought never to have held a higher place than that of Schoolmaster.

* See Neale, vol. ii. but particularly p. 38, 40, *et seq.* for an account of the persecution by James. It has been supposed that his government was milder than that of the preceding reign, but it is a mistake. It is true that the extent of the persecution has been denied by the court

jealousy throughout the kingdom, and daily added auxiliaries to the dissenters. Religious ceremonies become justly contemptible as well as hateful when converted into instruments of arbitrary power.

The civil government of James was no less impolitic and arbitrary than his ecclesiastical. Though a foreigner, of a nation too that the English had been accustomed to despise, and the son of a queen who, with the universal approbation of the Protestant portion of that people, had suffered on a scaffold, he assumed the language of the vicegerent of heaven,—responsible to God only for his actions, and whom it would be impiety to oppose in any of his pretensions, however inconsistent with the laws which made him king,—however unprecedented and oppressive to the people *. Even

party; but, on the same principle that we doubt it in James's case, we ought in that of Elizabeth.

In his very first speech to parliament, James had the imprudence to acknowledge the Romish church to be his mother church, though defiled with some deformities and impurities. He declared that his mind was ever free from thoughts of persecution, as he hopes those *of that religion* have proved since his accession. He expressed pity for the laity amongst them, and said he would indulge their clergy if they would but renounce the Pope's supremacy, and his pretended power to dispense with the murder of kings. He wished he might be the means of uniting the two religions, for, if they would but abandon their late corruptions, he would meet them half-way. But then "as to the Puritans and Novelists who do not differ from us so much on points of religion, as in their confused form of policy and purity; those," says he, "are discontented with the present church government, they are impatient to suffer under any superiority, which makes their sect insufferable in any well-governed commonwealth." Id. p. 27.

* Immediately after the discovery of the gunpowder treason, James thus addressed both houses of parliament: "And now I must crave

the first actions of his reign were subversive of the fundamental laws. On his journey to London, he ordered a thief to be executed without the formality of a trial *; and his first parliament, at its very commencement, were obliged to resist an infringement of their privileges, which, had it succeeded and been established into a practice, might have proved fatal to their independence. But, as this subject, in itself of the utmost consequence, has been completly misrepresented, and as it has been alleged that the privileges of the Commons were, at that period, undefined—whence it has been inferred, and the inference necessarily flows from the premises, that their importance in the constitution was extremely small,—we shall make no apology for pausing to explicate a point so vitally connected with the British form of government †.

All writs for the election of representatives had been originally returned to Parliament itself; but by the 7 Henry IV. they were made returnable to Chancery, whence they were issued ‡. Though,

a little pardon of you, that since kings are in the word of God itself called gods upon earth, and so adorned with some sparkles of divinity, to compare some of the works of God, the great king towards the whole and general world, to some of his works towards me and this little world of my dominions. "He says the Puritans are worthy of fire because they deny salvation to Catholics."

* Stow, p. 821.

† It is impossible for me to read Mr. Hume's account of this matter without the utmost pain. Many of his other statements may be ascribed to precipitation, &c. but I am afraid the artfulness shewn here must be imputed to a different cause.

‡ Journals, 3d April 1604.

however, the form of the writ was then altered, Parliament invariably exercised its right of examining elections, and the clerk of the Crown-Office always attended the lower house with the writs and returns, at the opening of every session, when committees were appointed for that purpose. During the long recesses usual in those days, vacancies frequently occurred; and, upon a suggestion to the Lord Chancellor, a writ was issued for a new election. This practice could not be productive of any ill effects, since the matter fell immediately under the cognizance of the house on its reassembling, and the right of the new member was determined by its vote. During a session, however, a vacancy could not then, any more than now, be supplied without a previous order from the house directed to chancery. But, in the 23d of Elizabeth, a proceeding, fraught with the most alarming consequences, was attempted, and which, to a certain extent, succeeded, though it may be observed, for the credit of the house, that its partial success was attributable to an irregularity which shall be explained. During the recess, the Chancellor had issued writs for elections in the room of certain members who were alleged to be incapable of attending either through sickness or foreign employment; but when parliament met again, this gave rise to an immediate discussion, when it was argued on the one side, and supported by precedents, that foreign employment particularly, did not forfeit a seat; but that admitting that these causes might warrant new elections, yet that

such elections could only proceed by the order of the house itself upon information before them. On the other side, the crown-lawyers contended that it was sufficient to make a suggestion to chancery: That to question this, were to discredit the Chancellor, and scandalize the judicial proceedings of that court: That wherever new elections were deemed requisite, if the Chancellor sent out a writ upon any suggestion, to chuse a new member in the place of an old, whether the cause were sufficient or not to remove the old, or the suggestion true or false, yet, that if a member were elected, the house was bound to receive him, "and the old remained discharged, *until the matter were farther cleared up, on the examination and judgment of the house* *." The new members were therefore received in the mean time, though one of the old members, who had been reported to be incurably sick, had recovered from his indisposition, and resumed his seat. But the following note by D'Ewes, the editor of the Journals, is worthy of attention: "Nota, that all this was done after the election of John Popham, Esq. the queen's solicitor for prolocutor or speaker, but, before his presentation to the queen, or her majesty's allowance of him. The agitation of which question was, doubtless, either privately muttered in the house; or, if it were disputed openly, it was suddenly and unwarrantably done, in respect that the House of Commons have no power to determine or resolve

* D'Ewes, p. 281, 282.

of any thing after the election of the Speaker, till he be presented and allowed, as may easily be collected by all precedents, both of later and former times. Neither did this opinion of the House, thus irregularly given, take any effect, because the contrary was resolved, March 18th, postea *." This irregular proceeding took place on the 19th of January, and, only two days afterwards, the House, in another case, maintained their privilege on this point, and the Chancellor himself, who was an old Parliament-man, and still retained his favourable feeling towards the House, supported them in their resistance of innovation. A member was indicted of felony, and the Chancellor was moved by suggestion to issue a new writ; but he declined it without an order from the House, who refused to remove the member till he were convicted, as it might be any man's misfortune to be unjustly accused †. On the 18th of March, the committee for elections returned their report regarding those who had been irregularly admitted during the investigation, and then it was solemnly resolved, that though the new members should be excused for their past attendance, yet that they thenceforth stood discharged of their rooms and places, "in the stead of such other members not being dead, unless special order should be taken by the house to the contrary." "It was farther resolved, that, during the sitting of Parliament, there do not, at any time, go out any writ for chusing

* D'Ewes, p. 281-2-3. † Ib.

any knight, citizen, burgess, or baron, without a warrant of the House directed for the same to the clerk of the crown, *according to the ancient jurisdiction and authority of this House in that behalf accustomed and used.*" But the Commons, while they vindicated their privileges, performed, at the same time, what they deemed their duty to the public, by retaining two of the new members in the place of others who were proved to them to be incurably sick—a measure performed by a special order of the House, in virtue of the power reserved in their general resolutions *. In the 29th of Elizabeth, while the fate of the Scottish Queen was the occasion for summoning Parliament, a case occurred of a second writ having been issued posterior to the execution of the first, under the pretext that the election was too precipitately carried, and when the Commons began to investigate the matter, the Speaker received from the throne by the lord chancellor a message for the house, announcing that her Majesty was sorry to learn that they had been troubled at their last meeting about the choice and return of knights for the county of Norfolk, a thing in truth impertinent for them to deal with, as the matter belonged exclusively to the lord chancellor, by whom the writs were issued, and to whom they were returnable; and that she had appointed his lordship to confer with the judges, and, upon a fair investigation of the subject, to

* Journ. p. 135. D'Ewes, p. 308.

adopt such a course for the new election as should be agreeable to right and justice. Much has been said about the tameness of Elizabeth's parliaments; but though, on minor occasions, they were too submissive, they showed, in this instance, that they both knew their rights, and could defend them when vitally invaded. Undeterred by the message, nay, rather inspirited by it in their duty, they proceeded to examine the case, and came to the following resolutions, which we shall present entire: "1st, That the first writ was duly executed, and the second election absolutely void. 2dly, That it was a most perilous precedent, that, after two knights of a county were duly elected, any new writ should issue out for a second election, without an order from the House of Commons itself. 3dly, That the discussing and adjudging of this and such differences only belonged to the said house. 4thly, That though the Lord Chancellor and judges were competent judges in their proper courts, yet they were not in Parliament. 5thly, That it should be inserted in the very journal-book of the House, that the first election was approved to be good, and the knights then chosen had been received and allowed as members of the House, not out of any respect the said House had or gave to the resolution of the Lord Chancellor and judges therein passed, but merely by reason of the resolution of the House itself, by which the election had been approved. 6thly, and lastly, That there should no message be sent to the Lord Chancellor, not so much to know what he had done there-

in, because it was conceived to be a matter derogatory to the power and privilege of the House *." The Commons again exercised their right in three different cases, without dispute, in the 43d of that Queen †.

Thus the privileges of the Commons, maintained from the earliest times, for they were modified, not altered by the 7th Henry IV., were manfully vindicated from every attempt to infringe them, during a reign in which a variety of causes, peculiar to it, had concurred to confer extraordinary powers on the sovereign; yet a stranger is no sooner seated on the throne, than he aims a blow at the very foundation of the people's rights. On summoning his first parliament, he issued a proclamation, prescribing to the community the choice of their representatives, and amongst other things, enjoining them strictly not to elect any outlaw, whether for debt or crime, and threatening to fine and disfranchise the corporations who returned, and to fine and imprison the person who should take upon himself the place of knight, citizen, or burgess, not being duly elected according to the laws and statutes in that behalf provided, *according to the purport, effect, and true meaning of the*

* D'Ewes, p. 393. 5—7. To weaken the force of this proof of spiri in the Commons, Mr. Hume says, "This is the most considerable and almost only instance of Parliamentary liberty which occurs during the reign of this princess," ch. xlv. Thus it ever is with this writer. Does any thing occur which bespeaks arbitrary government? It is immediately magnified into a general principle. Does the liberty of the subject clearly appear to be vindicated?—a salvo follows.

Id. p. 622. 4. 5. 7.

*proclamation.*—This requires no comment; but it will be necessary to clear up the subject of outlawry as a disqualification. In the 39th of H. VI., the Judges had declared outlaws to be ineligible; but the house paid no regard to their opinion. In every case of the kind, however, they seem to have examined the cause of the outlawry, and to have reserved the power of removing a member when it implied crime or infamy. Thus, in the first of Elizabeth, a member outlawed was charged with having defrauded his creditors, and the committee to whom the examination of the matter was entrusted, having made their report, the House was divided,—not as to the effect of outlawry considered in itself, but as to the particular grounds of it in the case before them; yet the individual was admitted *. Another case occurred in the 23d of that reign, and the ground of the outlawry having been examined, the person returned proved, that all his debts had been honestly compounded for, and took his seat. In the 35th of Elizabeth, the commons, after a great debate, came to the same resolution†, and it is extraordinary, that no case occurs of any indi-

* D'Ewes, p. 48. see the case of Goodwin and Fortescue in Howell's State Trials, vol. ii.

† Mr. Hume's statement of this case is very erroneous. He says, that the admitting him because he proved that his debts had been incurred by suretyship, "plainly supposes that, otherwise, it would have been vacated on account of the outlawry." Now, had outlawry been of itself a ground of disqualification, it had been enough to produce the record, the matter would never have been sent to a committee—a fact sufficiently proved in the other case.

vidual having been held disqualified on that ground. Having now explicated the subject, we shall proceed to the famous case which agitated the first parliament of James at its very commencement. Sir John Fortescue, an old counsellor, had started as candidate for Buckinghamshire, and was opposed by Sir Francis Goodwin, who proved successful. The court being anxious to defeat the election, the council and judges were immediately employed to devise the means, and they hit upon the outlawry of Goodwin, though unfoundedly, as the pretext. Upon this the election is declared null, a new writ issued, and Fortescue returned. But the house no sooner met than they restored Goodwin to his place. The king resented the proceeding, and instigated the lords to desire a conference with the commons on the subject; but the latter having refused a conference on a question which exclusively regarded their own privileges, his Majesty expostulates with them in the following terms, in which he fully developes his principles: "He was loth," he said, "to alter his tone, and that he should now change it into matter of grief by way of contestation. He did sample it to the murmurs of the children of Israel. He did not attribute the cause of his grief to any purpose in the house to offend him, but only to a mistaking of the law." "He had no purpose to impeach their privileges; *but since they derived all matters of privilege from him, and by his grant,* he expected that they should not be turned against him. That there were no precedents did suit this case fully; *precedents in*

*the times of minors, of tyrants, of* WOMEN, *of simple kings,* not to be credited, because for private ends. That by the law, the House of Commons ought not to meddle with returns, being all made into the chancery, and to be corrected and reformed by that court alone." "By this course," says a member, "the free election of the counties is taken away, and none shall be chosen but such as shall please the king and council. Let us therefore, with fortitude, understanding, and sincerity, seek to maintain our privileges. This cannot be construed any contempt in us, but merely a maintenance of our common rights, which our ancestors left us, and which it is just and fit for us to transmit to our posterity." "This may be called a *quo warranto* to seize all our liberties," said another. "A chancellor," observed a third, "by this course, may call a parliament of what persons he pleases. Any suggestion, by any person, may be the cause of sending a new writ. It is come to this plain question, whether the chancery or parliament ought to have authority." They therefore resolved to adhere to their former judgment; when they received a message from James "that he commanded, as an absolute king, a conference with the judges;"—from whom, by the way, he had already received an opinion favourable to his prerogative. This was calculated to bring matters to an immediate crisis, and, perhaps, at that particular juncture, the commons acted prudently in complying with the royal requisition. James himself presided at the conference, and had common sense

enough to perceive the propriety of departing from his lofty pretensions. The dispute, in so far as it regarded the individual case, was compromised, both elections having been set aside, but the privileges of the House were vindicated from any similar proceeding in future. Some of the high-spirited members, however, censured the committee for yielding so far in the particular case without consulting the house, and moved that the words "By the request of the King" should be inserted into their warrant for a new election; but the motion was lost*.

Mr. Hume has attempted to palliate the conduct of James in this instance by a most extraordinary argument, "that there was reason to believe that this measure, being entered into so early in the king's reign, proceeded more from precipitation and mistake, than from any serious design of invading the privileges of the Parliament"—and he has asked—"had the privileges of Parliament been, at that time, exactly ascertained, or royal power fully limited, could such an imagination ever have been entertained by him, as to think that his proclamations could regulate parliamentary proceedings?"—In the first place, with regard to the alleged precipitation and mistake, it is only necessary to observe that, though such an excuse might be admissible for an error in the private affairs of life to which the person committing the

* Journal, p. 151. *et seq.* Parl. Hist. vol. i. 998. Howell's State Trials, vol. ii. p. 91. *et seq.*

mistake had been previously a stranger, it cannot be listened to in favour of a monarch, whose public acts ought to be performed by his servants, through whom he should receive instructions in all his concerns*. But this monarch evidently appears to have interposed personally in the matter, and to have been resolved to set the established and invariable practice as well as law at defiance. In the next place, if we answer Mr. Hume's queries in the affirmative, it will necessarily follow, that we must pronounce every unconstitutional act of that king, authorized by the precedents of former times, merely because they occurred in his. The conduct of James is no more extraordinary than that of a vain, foolish person, suddenly raised from beggary to affluence, whose eyes, dazzled with so unexpected an altitude, deceive him into a belief that his wealth is unlimited, and betray him into extravagancies which ten times his fortune could not support†. But, in the last place,

* James in 1616, went to the Star Chamber, pretending that Henry VII. from whom he was doubly descended, had done the same, and the reason he assigned for not having done it sooner, was, that "though he was an old king when he came thither, and well practised in government from twelve years of age, yet here he resolved, with Pythagoras, to keep silence for seven years. That apprenticeship ended, &c." why did he not pursue the same principle in regard to elections?

† Every part of James's conduct verifies this: "A prince," says Roger Coke, "so poor before he came to the crown of England, that if he had not been supported by the pension which Queen Elizabeth allowed him, he could not have maintained the garb of many of our English gentry; and being come to the crown of England, not only the sacred patrimony of it was squandered and embarrassed upon debauched and profane favourites, but the people, otherwise oppressed

he distinctly avowed his resolution to disregard the precedents, as having passed "in the times of minors, of tyrants, of women, of simple kings"—a catalogue in which he could have had no difficulty in ranking any sovereign, since the characters of all were to be determined by his own voice. As, however, there had been only two women on the English throne, of whom the first could scarcely be meant by him, indeed all the precedents took place under her sister, James must be considered as having distinctly avowed a purpose to govern on far more arbitrary principles than his immediate predecessor, whose administration has been so blackened to apologize for his, while the expression of contempt towards "women," (a sneer which ill became his unmanly disposition, towards any one, but especially towards Elizabeth, whose spirit so infinitely excelled his own,) could not fail to give deep offence to a people who so fondly cherished the memory of their former sovereign *.

That the inexperience of James might form some

with almost infinite monopolies and projects which the nation never before heard of, and as they were new, so were they all illegal; and all these to make his favourites rich, while he continued the poorest king that ever governed England: Jostled in his throne by the Presbytery in Scotland, yet nothing less than sacred would down with him from the clergy in England, though his dissolute life and profane conversation were diametrically opposite."

* When Rosny, afterwards Duke of Sully, sat at table with James, that monarch not only spoke contemptuously of Elizabeth, but boasted that he ruled her council for a long time before her death!—Mem. De Sully, tome iii. p. 274.

apology for this part of his conduct, it would be necessary to prove that his subsequent government was, in the main, unexceptionable; but, unfortunately for his memory, it is too apparent that he proceeded to the last without amendment, and, indeed, on this very subject, it may be remarked, that he endeavoured to subvert the freedom of elections in another form *. His pretensions, too, were such as became an absolute monarch only. In 1610 he summoned Parliament, then busy with an inquiry into grievances, to Whitehall, and told them that "he did not intend to govern by the absolute power of a king, though he well knew the power of kings was like the divine power; for, as God can create and destroy, make and unmake at his pleasure, so kings can give life and death, judge all and be judged by none; they can exalt and abase, and, like men at chess, make a pawn take a bishop or a knight: But that all kings, who are

* Not only were undertakers employed by the court to carry elections for the crown, but threats were resorted to, as may be seen from the following passage of "a speech out of doors." 3 Car. "Where the law giveth a freedom to elect burgesses, and forbiddeth any indirect course to be taken in their elections, many of the incorporations are so base-minded and timorous, that they will not hazard the indignation of a lord lieutenant's letter, who, underhand, sticks not to threaten them with the charge of a musket or a horse at the muster, if that he hath not the election of the burgesses." Franklyn, p. 238. Mr. Hume treats the complaints of the Commons on this subject with contempt—"because it was the first infallible symptom of any established or regular liberty;" but undue interference of a certain kind was of an old date, though the Stuarts exceeded their predecessors in the means employed; and if they had not, the conclusion from Mr. Hume's premises is, that the instant the Commons began to acquire consequence, it was justifiable in the king to deprive them of it.

not tyrants or perjured, will bound themselves within the limits of their laws, and that those who persuade them to the contrary are vipers and pests, both against them and the commonwealth. Yet that, as it is blasphemy to dispute what God might do, so it was sedition in subjects to dispute what a king might do in the height of his power. And as he will not have his subjects discourse of what he may, so he will do nothing but what shall be consonant to law and reason." But then he is himself to be sole judge of law and reason, for he commanded them "not to meddle with the main-points of his government, that was his craft, and it would be to lessen him, who had been thirty years at his trade in Scotland, and had served an apprenticeship of seven years in England *." Far from profiting by this lesson, parliament remonstrated, and he soon dissolved them, after which he summoned no parliament for four years. With the two next he quarrelled, and imprisoned the leading members, or sent them on expensive foreign employments.

Of his disposition to exalt the throne above the control of the legislature, he afforded many other convincing proofs during his reign. In ecclesiastical matters he assumed supreme power, and he struck at the very vitals of the Constitution by

* Wilson in Ken. p. 682. see also James's Works, p. 532. This speech is much of a piece with one delivered by him in the Star Chamber in 1616. See Sanderson, p. 439. The impious babbling in the last is greater, the principles as detestable. See his Law of Free Monarchies, and Basil. Dor.

issuing illegal proclamations with penalties, which were enforced by the Court of Star-Chamber *, while by levying taxes without an Act of Parliament, he prepared the way for the disuse of that assembly. He, of his own accord, imposed new duties at the Ports, and arrogated the right of doing so at pleasure, a pretension in which he was supported by venal statesmen and corrupt lawyers, who concurred in fabricating precedents to deceive the people: Nay, his judges solemnly decided so monstrous a principle in his favour. Innumerable projects and monopolies were devised for raising money, but he was latterly obliged to pass an act against them: forced loans, without the pressing emergencies which were used as an apology for them in the preceding reign, were resorted to; and the hateful measure of benevolence, which had been so much reprobated, and so opposed even in Henry the Eighth, and so long discontinued, was revived: But though severities were practised to force men to contribute, such as ordering one Barnes a citizen of London, to carry a dispatch to Ireland, the scheme was very unsuccessful, as the people supported each other's resolution to resist it †. Other illegal measures

* Howell's State Trials, vol. ii. p. 524. *et seq.*

†. Wilson, p. 696. Mr. Hume asserts openly, in regard to this reign, that benevolences had been common in all former reigns; but he quotes no authority, nor had he done so in the original work—History of James I. and Charles I.—though he did not intend to carry the history further back. The truth is, that it was impossible for him to have a proper knowledge of the history within the time he took to write it.

might be specified, but we confine ourselves chiefly to such as are of the most appalling nature, and directly subversive of the constitution.

Thus, James was so far from yielding to the more liberal views of the times, that he made pretensions and acted upon principles, which would not have been long submitted to at any previous period. This has been thought irreconcilable with the natural timidity and indolence of his character, and been most strangely used as an unanswerable argument for concluding that the government, previous to his accession, had been arbitrary*: But his timidity and indolence appear to have, partly, driven him into that course. Irritated by opposition and want of respect, during his residence in Scotland, he consoled himself with forming a theory absolved from restraints upon his prerogative—a theory which, in its worst features, he subsequently practised upon that nation; and, when we reflect on the pernicious influence of the Scottish aristocracy, we might not have been disposed to condemn the monarch for desiring such

* I believe that, in all courts, those who have ever been for refusing concession at a critical juncture, and resorting to sanguinary measures, will be found to have been the most cowardly; and it is natural. Their fears suggest to them danger in the popular spirit, and they would employ the moment of power in crushing those they dread. A truly brave man, on the other hand, if he possess common honesty, coolly surveys the ground, and, as his fears do not urge him to improper measures, nor blind his judgment, he sees the real danger, and avoids it by conciliation.

vigour in the executive as should enable him to curb their lawless proceedings, had he not afterwards proved himself unworthy of power, by abusing that which devolved upon him over Scotland by his accession to the English crown. In England, he had anticipated far greater authority; and when he perceived that, from the particular sources of influence which had operated on Parliament under the Tudors having been exhausted, that assembly, supported by the nation at large, were prepared to assert their rights with a higher hand, apprehensions of a different kind alarmed him. During the intervals of Parliament, matters seemed to proceed smoothly, as the cry of discontent was seldom permitted to reach the royal ear, and was besides attributed to the arts of the parliamentary leaders, who were accused of encouraging the popular sentiment as a support to their own designs; but, while his temper could not easily brook opposition, nor part with authority, and his indolence made him shrink from the idea of a contest, James descried no common danger, in the measures of a regularly constituted body, whose resolutions men regarded as sufficient to controul the crown itself. Imputing to that assembly his own love of power, he inferred that, as their authority extended itself, however they might still gratify him with the name of king, they would be satisfied with nothing short of the whole power of the executive; and his reading furnished him with instances of monarchs who had been deposed

by that supreme court *. His fears and indolence equally taught him to fly for shelter to arbitrary government, and, concurring with his predilections, induced him to direct his whole resources towards superseding the legislature. But he forgot that, while he had not a single regiment to enforce his measures, it would have required a considerable army to complete his schemes; for, though men may be driven, they are not to be persuaded, into slavery. James, however, appears to have deluded himself with the notion of defrauding the people of their rights.

But, of all princes, he was amongst the most poorly qualified for such a task. A foreigner ever labours under disadvantages, and these he increased by preferring Scotsmen to English offices,—a course which lost him the usual patronage by which monarchs procure allies to aid them in usurpations upon the people's rights; and he squandered in folly the treasure which might have made him feared abroad, and respected at home. Destitute not only of the qualities that win, and the talents that dazzle, and impose upon mankind, but of even the essential virtue of ordinary sincerity, he soon forfeited the confidence of his subjects; while, in his whole conduct, he evinced a total want, not only of common discretion, but of

* The arguments put by Raleigh into the mouth of the councillor in his dialogue, were assuredly prevalent in his time; and the reader will find how the courtiers apprehended deposing principles from parliaments. Prer. of Parliaments.

common decency,—defects sufficient to sink genius itself, and fatal to men of ordinary minds, but, above all, to one, "the mystery of whose power," to use his own words, "is not lawful to be disputed, which seems to wade into the weakness of princes, and diminishes the mystical reverence of them that sit in the throne of grace *." His foreign politics were as unpopular as his domestic. A matrimonial alliance with the house of Spain, had alienated the affections of even Catholics themselves, from Queen Mary: The remembrance of that age, together with the persecutions on the Continent, and the efforts of Spain against the religion and liberties of England, rendered such an alliance now for the heir apparent, the horror of all good Protestants; yet James pursued it with the utmost keenness,—a proceeding the more inexcusable, as, at a former period, he had solemnly inculcated upon his son's mind, the impropriety of marrying with a Papist. But this was only a part of his foreign policy which disgusted his subjects; for he, at the same time, thwarted all their predilections, and disappointed

* Sanderson, p. 441. See Roger Coke, p. 36, 71, 78, 151, as to his drinking, low sensuality, profane swearing, and ridiculous vanity. Welden is thought satirical, so is Osburn; but their account of things bears too many marks of truth to be disregarded in the main, and is confirmed by others,—by passages in Clarendon, and in Hacket's Life of Williams, tracts of the times, as Tom Tell-troath, &c. and above all, by the correspondence betwixt the king and Buckingham, published by Lord Hailes. (See also letters in M'Auley's history,)—correspondence, that ought never to have seen the light.

their hopes in regard to the French and German Protestants, and the claims as well as inheritance of his son-in-law, Count Palatine of the Rhine, who had espoused his only daughter. While, therefore, prelates and courtiers emulated each other in compliments to his inspired understanding, pronouncing him another Solomon sent to rule mankind, this king in vain endeavoured to suppress the voice of discontent and contemptuous reproach, by issuing proclamations against talking of affairs of state:—the general clamour was loud in proportion to the attempts to restrain it, the common complaint being, "that Great Britain was less than Little England; that they had lost the strength by changing sexes;"—a just return for his affected contempt of women;—"and that he was no king, but a fiddler's son, otherwise he would not suffer such disasters at home, and so much dishonour abroad: That he assumed the title of Defender of the Faith, yet suffered the Protestants of Germany and France to be extirpated: That he might almost have purchased such a country as the Palatinate, with the money sent on embassies; and that, by his promising the French Protestants assistance, he had only made them confident to their ruin *."

It is unnecessary for us to do more, than just observe, that when a prince, unsupported even by a regiment of guards, and who, consequently, stood

* Wilson, p. 748.

by public opinion alone, had fallen into such contempt, arbitrary government could not long be submitted to;—that such absurd pretensions as the monarch made, must either be abandoned or a convulsion be unavoidable.

In order to throw odium on the popular party of that age, and vindicate the House of Stuart, the former have been represented as a set of gloomy fanatics, whose discontent originated in their dislike of some ceremonies alone: But this is a mistake, as the political motives, though intimately connected with the Reformation, would have operated independently of religious zeal. Had such, however, really been the fact, it was surely as unpardonable in the sovereign not to gratify them on that head, as it would have been easy for him to have regained their confidence. That he should have apprehended danger from the ambition of the Puritan preachers, and therefore have opposed them, was to have been expected; but the popular voice carried authority with it, which demanded respect, and the true way to destroy the influence of such preachers, was to yield to the general wish of an abrogation of certain ceremonies, which, at that time, would most probably have given satisfaction. If it be alleged, in defence of the monarch, that his conduct sprang from piety, then it must be admitted, that the fanaticism that dictated the ceremonies was at least equal to that which opposed them, while there is a vast difference betwixt the feeling which stimulates a people to pursue their

own way of worshipping their Creator, and the presumptuous zeal that would force them to adapt their worship to the preconceived notions of an individual. But the apology cannot be admitted for James, whose ecclesiastical government was the result of political motives alone, of the same description too with those which led to so many infringements of popular rights: and hence the conduct of the nonconformists must likewise be ascribed to political as well as religious views: since the ceremonies were enforced for the purpose of enslaving the human mind, it could not be doubted that every acquiescence would be productive of others, till the whole Catholic system were again entailed upon the nation. The contention, therefore, did not merely regard existing ceremonies, though these were disliked on their own account, but in both parties, flowed from deeper principles. From such a contest, a patriotic free-thinker, to whom modes of worship, abstractly considered, were indifferent, could not have stood aloof, but must have found himself called upon to array all his forces on the popular side, both to rescue the people from oppression, and to support religious tenets calculated to promote public prosperity. The leading men of that age, however, were warmly attached to the reformed religion, and they were necessarily alarmed, when they discovered, in certain ceremonies, an earnest of a deeper invasion of the Protestant faith, to advance the arbitrary designs of the court; while, that those who were chiefly actuated by political mo-

tives might not evince lukewarmness in espousing the cause of the non-conforming party, the court industriously confounded them with that party, by branding with the name of Puritan all who asserted the national rights. Even decent conduct seems to have involved men in the same reproach*. The ridicule against this body has, therefore, been misplaced; at the worst, their principles, even abstractly considered, were at least as reasonable as those of the party they opposed, and it is a secret to none, that every party or sect will always contain adherents who push the common tenets absurdly far, and that such will ever be singled out by their adversaries for the purpose of attaching odium to the whole class. But, after all, it is extremely unphilosophical to determine the character of an age, or even of individuals, from their religious dogmas alone, unless they be hostile to the public good; and the indiscriminate condemnation of either, on that ground alone, perhaps bespeaks a species of bigotry, where it is not suspected, (being thought impossible,) not inferior to that which is held up to scorn.

In the preceding detail, sufficient causes of the popular spirit, which arose at this period, may be discovered, without imputing it, as has been done, either to the revival of classical learning or to the extraordinary talents of leading men. Wherever the human mind is uncramped by the combination

* See Hutchinson's Mem. vol. i. p. 118, *et seq.*

of religion and politics, it requires little more than a fair opportunity to assert its independence—for human nature has undergone no change from the time of the Greeks and Romans—and that opportunity, aided indeed by other circumstances, was fast opening to the nation. Public habits were the best support of the throne, and these the injudicious measures of the Court shook to their centre: For, as the same habit of mind which inspired reverence for the monarchical branch of the constitution, produced attachment to the popular as well as to the privileges which had descended to the people from their ancestors, the Court, by striking at them, necessarily lost the other. Far then, from imputing the spirit of liberty to the revival of classical literature, which produced no such effects in France, we may ascribe the high taste which popular characters had for the sentiments of antiquity to the freer spirit which other circumstances inspired. The knowledge of antiquity operates according to the medium through which it is viewed, and in the bulk of the learned, who are eagerly advancing their own selfish ends, it only begets that supercilious arrogance which the pride of superior intelligence produces in naturally vulgar minds. The mass of the people have not leisure to devote themselves to the acquirement of classical literature, and yet, unsupported by them, individuals can do nothing. Indeed, it has been the mistake to ascribe infinitely too much to individuals, for great occasions create, or rather call

forth, talents suited to them, while the highest genius is lost or unknown in unfavourable stages of society. When, however, talent is awakened into public life by genial events, it re-acts upon the community, as the leaders, confirmed in their principles, by studying the institutions and characters of antiquity, diffuse a portion of their own more exalted views through the general mass. But, if knowledge was so employed by one set of public men, it was no less abused by another, amongst whom it is melancholy to rank Bacon himself, who not only wrote in defence of the king's right to impose duties on merchandize at his own will, but proclaimed his readiness to serve his master on any terms. In the year 1615, he, by letter, begged the Chancellor's place, objecting to Coke for his popularity, "as such were no sure mounters for his Majesty's saddle," to Hobart, as no statesman; and, says he, "If you take my Lord Hobart, you shall have a judge at the upper end of your council-board, and another at the lower end, whereby your Majesty will find your prerogative pent. For, though there should be emulation between them, yet as legists they will agree in magnifying that wherein they are best.—For myself, I can only present your Majesty with *gloria in obsequio;* yet I dare promise, that if I sit in that place, your business shall not make such short turns upon you as it doth, but when a direction is once given, it shall be pursued and performed, and your Majesty shall only be troubled with the true care of a king, which is,

to think in chief what you would have done in chief, and not how for the passages *."

Such language leads us to observe, that, in reviewing this reign, it is impossible not to feel far greater indignation at the ministers, whom the hope of preferment perverted from the path of duty, than at the monarch whose situation and want of discretion form some excuse for his conduct.

When Bacon could act thus, it is not wonderful that the poets, who, with some, and those great, exceptions, have generally been venal, should have prostituted their pens to recommend themselves to the court. The dramatic productions of that age afford unequivocal proofs of the spirit of the government. It has been said of Shakspeare, who wrote chiefly in Elizabeth's reign, that we nowhere meet with mention of English liberty in his works; and indeed nothing very striking on that subject was to have been expected from a poet who wrote for the court; but we expect, and meet with, liberal sentiments, while the most disgustingly opposite disgrace every page of his successors. Take this as an example of the first:—Henry VIII.

* Bacon's Works, vol. iii. p. 280. See also "Remembrances of his majesty's declaration touching the Lord Coke," Id. p. 507. The objections to Coke were, that he opposed arbitrary measures and arbitrary courts: that his exposition of the law of treason was dangerous to the king; and that, in his reports, which tended to cramp the prerogative, he had not attended to his majesty's animadversions! Some have attempted to defend Bacon's conduct, by alleging the opinions of the times; but the answer to that is, that he endeavoured to raise his own fortune by holding up his conduct as opposite to that of Coke; declaring himself a person who supported the prerogative, while Coke wished to confine it.

when informed of the illegal contributions by Wolsey, is made to exclaim—

> "Have you a precedent
> Of this commission? I believe not any.
> We must not rend our subjects *from our laws,*
> *And stick them in our will**."—Act I. sc. 2.

The doctrine of Shakspeare's successors may be estimated from the following passage by Massinger. Cozimo, great Duke of Florence, represented as a most virtuous prince, says,

> "We stand not bound to yield account to any
> Why we do this or that, the full consent
> Of our subjects being included in our will."

But it is, unfortunately, not in this point only that a marked difference exists. The plays of the one period are, generally speaking, unimpeachable in their morality, while those of the other are abominably obscene, (in this respect, Massinger's form an exception,) and the Catholic doctrine is occasionally held up in them to veneration. And here it may be remarked, that though complaints of the decay of morality are too common in all ages, there are too many proofs of the profligacy

* Some have imagined that this was written in James's time, because an allusion is made in Cranmer's prophetic speech to the union of the Crowns; but that was clearly added afterwards, and the whole speech has justly been considered as a compliment to Elizabeth. In the first years of James's reign, the stage had taken great liberties; but he corrected it. Thus Mr. Calvert wrote to Winwood, 28th March, 1605: "The plays do not forbear to present upon the stage, the whole course of this present time, not sparing either the king, state, or religion, in so great absurdity, and with such liberty, that any would be afraid to hear them." Winwood's Mem. vol. ii. p. 54.

engendered by the court—to allow us to indulge scepticism on the point.

Examination of Hume's account of the sentiments entertained during that age, of English liberty, &c.

In Mr. Hume's history of James I., we meet with the same general assertions about benevolences, imprisonments, proclamations, the dispensing power, &c. which have already been so fully examined by us; and, though it will doubtless occur to the reader, that the author proceeded upon the assumption of having proved all those matters in the previous history, it is a singular fact, that, in his first historical publication, which comprised only the first part of the history of the House of Stuart, and at that time, he did not mean to go farther back, all those assertions occur, unsupported by authority. It is not our purpose to resume consideration of those points; but we shall be excused for a few remarks upon the statement regarding the opinions of the age, as to the extent of the prerogative.

The learned author has alleged that the right of issuing proclamations, with the effect of laws, "was established by uniform and undisputed practice, and was even acknowledged by lawyers, who made, however, this difference between laws and proclamations, that the authority of the former was perpetual, that of the latter, expired with the sovereign who emitted them *:"—That, when the king's power of levying new customs and impositions, by the mere authority of his prerogative, was disputed by the Commons, "it is remarkable

* Vol. vi. p. 52.

that, in their debates on this subject, the courtiers pleaded, as a precedent, the example of all other hereditary monarchs in Europe, and particularly mentioned the kings of France and Spain: nor was this reasoning received by the house either with surprise or indignation. That the members opposite either contented themselves with denying the justness of the inference, or they disputed the truth of the observation; and a patriot member, in particular, Sir Roger Owen, even in arguing against the impositions, frankly allowed that the king of England was endowed with as ample power and prerogative, as any prince in Christendom *;" and that he, Mr. Hume, "had not met with any English writer in that age, who speaks of England as a limited monarchy, but as an absolute one, where the people have many privileges†."--That lawyers, during James's reign, should have asserted that proclamations had the authority of laws, is not wonderful; for some of the greatest of that class, as Bacon and Davies, perceiving that the adoption of such principles, opened the sure road to preferment, did not hesitate to promote their own fortune, at the expence of all integrity; and, when their language is compared with that of their predecessors, it is calculated to give us the worst impression of James's government. The language of authors also, accommodated itself too much to the opinions of the Court, and works of a contrary description

* Vol. vi. p. 73. † Note Q. at the end of vol. vi. p. 568.

were proscribed. But it would be a melancholy fact indeed, if nothing of the spirit of their ancestors were discernible, either in parliament, or in the writings of that age, particularly as the sentiments prevalent at that monarch's accession, were thus expressed by the Speaker of the Commons, a lawyer too, who had no wish to offend his new master. After telling the king, that he hoped his Majesty would long, Nestor-like, sit on the English throne, he says, "the ark of government of which kingdom hath ever been steered by the laws of the same; and these distributed to the jurisdiction of the several courts of justice; the commanding and imperial court whereof, is this your Majesty's Great and High Court of Parliament, by whose power only, new laws are to be instituted, imperfect laws reformed, and inconvenient laws abrogated; whose justice therein is such and so absolute, that no such laws can either be instituted, reformed, or abrogated, but by the unity of the Commons' agreement, the Lords' accord, and your Majesty's Royal and Regal assent; only to your Highness's prerogative, nullity, by your own disassent to their conclusions, belongeth; for that this court standeth compounded of two powers, the one ordinary, the other absolute; ordinary in the Lords' and Commons' proceedings; but in your Highness absolute, either negatively to frustrate, or affirmatively to affirm; but not to institute *."—If principles of this kind, which

* Journ. 22d March, 1603. p. 146.

are sufficiently broad, and uttered too, on an occasion which removes every suspicion of their not having been quite prevalent, and understood on all hands, be found, at an after period of that reign, no longer to have apparently animated the Commons, we must form a melancholy opinion of that monarch's administration; and merely conclude that, since the spirit that dictated free principles, burst out with such force a few years afterwards, men only suppressed, though they did not forget, what belonged to a free people, till an opportunity was brought about by the mad pretensions of the court, for correcting its abuses and usurpation, by a union of all the independent classes.—But the historian has allowed himself to fall into inconceivable errors on this subject, by having, through some fatality, singled out every insulated passage or expression that seemed to warrant his preconceived opinions, while he passes over the context, which places matters in so very different a light, as to develope the highest principles of civil liberty.

The right of imposing new duties at the ports, by the mere authority of the prerogative, had been usurped by James, and decided, by venal Judges, to be inherent in the Crown. The Commons had warmly taken up the subject before the dissolution of Parliament in 1610, and their successors resumed the question where they had left it, in the beginning of the next Parliament, which was assembled in 1614. A search was made by them into precedents, and it was resolved by the whole

House, without one dissenting voice, that the King could not impose without the authority of the Legislature *. The Commons, who managed the question with no less prudence than ability, desired a conference with the Lords upon it, that they might jointly petition his Majesty, "with a remonstrance of their right:" and it is in their instructions to the members whom they nominated, to conduct the debate at the conference, that the passage occurs on which Mr. Hume has grounded his assertion about proclamations having, admittedly, the effect of laws during the life of the monarch who emitted them. In the legal argument that had taken place in the Exchequer-chamber, various grounds for the pretended right had been advanced; and however unsubstantial these were, it was necessary to meet them; for, since the Judges maintained the usurped power of the Crown, if the King did not make concession to Parliament, there was no alternative but submission, or an appeal to that last resort which was tried in the next reign, and which is only justifiable when other remedies have failed, and when there is a fair prospect of success. On this principle the commons acted,—a principle that the historian appears, not only here but elsewhere, to have overlooked, though it fully accounts for the line of argument adopted by them in this instance, as well as for that acquiescence in certain partial irregularities of former times, which affords the

* Journals, 12th May, 1614, p. 81.

basis of his humiliating theory of the ancient English government. The Commons divided the argument into nine different branches, which were again split into minor ones; and they assigned one only to an individual, or to two or three conjoined: and, as James had claimed and exercised the power by means of proclamations, that point, with other matter, was assigned to one member, who was instructed to argue, that his Majesty had imposed for himself and his heirs, by letters patent, but that this was strange, as proclamations were only obligatory during the life of the monarch who issued them, and therefore he could not impose but for his own life. The journals are remarkably succinct and indifferently expressed; but it is easy from this to infer the whole line of argument on that head*. Customs were said to have been originally imposed by the prerogative, and it was argued that the subsequent grants by Parliament implied a liberality in the particular princes, but could not derogate from the royal authority. The answer was, that if the ancient princes had done it, the right could only have been exercised through letters patent, as James himself had effected it; but

* Journals, 12th May, 1614, p. 481. To prevent misconception, I shall here give the precise words of the Journals. "I. An introduction, briefly declaring matter in fact, and the state of the question.—Direction to him in three things, wherein we conceive the king to have, by misinformation, done other than any of his ancestor. 1. The time: For now by letters patent, and in print, these impositions set for him and his heirs for ever; which never done before: which strange; because no proclamation bindeth longer than the king's life; so could not impose, but during his own life." P. 481.

that was inexplicable, since these ceased to be obligatory with the life of the monarch who emitted them; and the mode in which the alleged right either was, or could be, exercised, proved that the inference, from the obscurity which hung over the origin of ancient customs, was erroneous. It is vain to argue, that, in this, we have a proof that proclamations might be issued; for such a right has ever belonged to the Crown, under the condition that the proclamations shall be agreeable to the laws; and, though James himself arrogated a right above law, a pretension in which he was supported by Davies, the most politic lawyers, as Bacon, argued that proclamations for new duties at the ports were conformable to the common law, which had given that power to the monarch. If Mr. Hume were entitled to draw any conclusion from this in favour of proclamations, it could only be to the extent of imposing customs—the subject on which the passage had occurred, and to which it exclusively referred. But, on that point, we learn from himself, that the Commons utterly denied the royal power; and had they done otherwise, James would soon have withdrawn the objection by new-modelling his proclamations. Did any doubt remain on this head, it would be removed by the other branches of the argument—one of which was founded upon "the common law, the sinews of the body of the commonwealth, with some statutes strengthening it;" another upon the cessation of any attempt to impose during the reigns of ten great princes, who could not be presumed to have taken as gifts from the

people what they might have exacted of their own accord. How, then, Mr. Hume should have discovered, in this insulated passage, authority for stating that lawyers admitted proclamations to have the effect of laws, is inconceivable, and our wonder is increased when we consider that he himself refers to a petition of grievances in 1610, to which, however, he has not done justice, wherein this very power is most directly declared to be destructive of the liberty of the subject—as contrary to "the indubitable right of the people of this kingdom, not to be made subject to any punishment that shall extend to their lives, lands, bodies, or goods," (if it extend not to these, to what does it extend?) "other than such as are ordained by the common laws of this land, or the statutes made by their common consent in Parliament *." Thus much for proclamations.

James was the first English monarch who ever founded his pretensions upon the powers of foreign princes in regard to their subjects; and though the English people were perfectly aware of their privileges, some of the commons, who perceived that a crisis was fast approaching, endeavoured to gratify the king's vanity, while they vindicated public rights, by acknowledging, on the one hand, that, in authority, he was not inferior to foreign princes; and, on the other, arguing that, by the laws of other nations, the sovereign could not impose, without the intervention

* See Petition in Howel's State Trials, vol. ii. p. 519, *et seq.* particularly 544, with the list of illegal proclamations annexed.

of the three estates, any more than in England. This, accordingly, was one branch of the argument to be maintained at the conference, and it was undertaken by Sir Roger Owen, the very member who had ascribed to the English king equal power to that enjoyed by any other in Christendom *. The subject of impositions had been frequently discussed in the Lower House, where many admirable speeches had been made on it, and the writings of Commines and Fortescue had been quoted in proof of the ancient superiority of the English government †. Some days after the motion for a conference with the Lords, when on another question, it had been resolved that "the parliament could not give liberty to the king to make laws," the grand subject of impositions was again introduced, and Mr. Jones having observed, that the king could no more impose duties for protection upon the sea than upon the land;

* When Sir R. Owen made this admission, he stated that it appeared by many acts of parliament, the king could not impose; whence it follows that Mr. Hume's statement rests, at the best, on an abuse of words. It was allowed, on all hands, that the English king could not make laws without parliament; and this member stoutly denied his power to levy duties without a grant by the legislature. But, if he were thus restrained, it is ridiculous to talk of the unlimited extent of his prerogative, and the utmost that could be said on the subject is, that Sir Roger Owen, with some others, was not acquainted with the wretched condition of foreign states, though he shewed himself perfectly familiar with the rights of his countrymen. The after debates, however, fully explain this matter.

† See Yelverton's speech in Howel's State Trials. No. 737 of Har. MSS. is a copy of it, with the remonstrance of the Commons prefixed. See also the journals for Skeletons of Speeches this session, 18th April, p. 466, 467. 5th May, p. 472, 473, 474. 12th May, p. 481, 482.

that, though the sovereign might restrain any man from quitting the kingdom, if danger were apprehended from him, yet he could not grant a dispensation for money; and that the power arrogated by the crown, would reduce the people to villanage;—Sir H. Wotton stated, that he was troubled with Sir Roger Owen's part, as it would be found that, though the power of imposing belonged not to elective princes, it did to hereditary; that, on this principle, the emperor could only impose in imperial diets, and the King of Poland was equally restrained; but that every petty prince in Italy imposed by the mere authority of his prerogative:—That the king of Spain could not impose in Arragon where, at his coronation, they say, "We, as great as you, make you king to rule us according to our laws:" Yet that in Castile, he imposed at discretion; and that, in France, the king imposed by virtue of his prerogative, and the last king, Henry IV. levied £14,800,000, by a tax on salt, which he, at the same time, obliged every family to purchase. This member concluded with the remark, that an hereditary prince had greater power than an elective. To this, Sir Roger Owen himself replied, that no prince in Italy anciently exercised such a power; and that, while he admitted the practice of the kings of France and Spain, he maintained that the legal and constitutional principles of those monarchies, as appeared by their law books, denied such authority to the sovereign. He farther observed, that the origin of kings was by election and *consent*. The se-

cretary, on the other hand, stated, that though he did not mean to maintain the right of imposing, yet that it would appear, upon due examination, that, *de facto*, foreign princes did impose, and he must hold that they did it, *de jure*, till the contrary were proved. Three members then successively spoke on the popular side:—The first, Sir Thomas Rowe, remarked that the dukedoms of Florence and Milan were mere tyrannies; and that the first king who ever imposed in Castile, had authority from the cortes, which corresponded with our Parliament. The next was Sir D. Diggs, who asserted that the true ground was *nolumus leges Angliæ mutare*, and all the rest was but illustration; "and, to cross the unfit persuasions of some, which tell the king they do it in France and Spain, and he is as great as they." The third, who followed on the same side, was Sir Edward Sands, who remarked how weighty impositions by prerogative were, since one prince had by a single tax levied L.14,800,000, and enforced people to purchase the article: "*That the king of France and the rest of the imposing princes also made laws which would, in a short time, bring all to a tyrannical course, with confusion both to prince and people*,"—a point which he illustrated by alluding to the death of the late king;—that there was *no* sovereign who had not been originally elective; and "there was a double election of person and care," (duty) "but both came in by consent of the people, and with reciprocal conditions between king and people:" That a king by conquest might also be

expelled whenever the people had power; and that it was no argument to say, that because the king of France imposed, the king of England might likewise *. This language will not be denied to be boldly constitutional; and it was a fact taken for granted on all sides, that England enjoyed privileges beyond the continental states.

With regard to the writings of that age, it is scarcely necessary to observe, that if they really were all of the stamp described by Mr. Hume, it would only prove that the arbitrary government of James had succeeded for a season in crushing the liberty of the press,—a measure which he evinced great anxiety to accomplish. But, though in writings intended for the court, there be too many proofs of a servile spirit, works of an opposite description found their way into the world. Not to allude to those which held up James to scorn, as Tom Tell-Troath, &c., we may observe that a new edition of Fortescue's work, *De Laudibus Legum Angliæ*, with notes by Selden, was published in 1617, and that Smith's Commonwealth, which, from the modesty of the author, had before that been only circulated in manuscript amongst the learned, was printed in 1609. Sir Thomas Overbury, in his travels, makes observations upon the institutions of different countries, and remarks that the government of the united provinces resembled that of England; that the government of Flanders was more arbitrary, and that France

* Journals for 21st May, p. 492, and 493.

was an absolute monarchy, where the prince might act at discretion *. But the very books to which Mr. Hume refers in support of his own theory, prove that France was in a very wretched condition in comparison of England: Davies' work on impositions has already been referred to by us; and though it be one of the most exceptionable performances in the language, and the author maintains the king's power to raise his prerogative above the laws, he states explicitly that it had not been done. Raleigh's prerogative of parliaments, conceived in the form of a dialogue between a councillor of state and a justice of peace, has also been quoted by Mr. Hume, who has singled out the passage which appeared to him to imply absolute power in the prince; but, though the work was dedicated to King James, and contains some strokes of flattery that were to have been expected from a prisoner under sentence of death, who anxiously desired his life and liberty,—as well as from one who had, in the preceding reign, been a thorough courtier, and had shared some of the smiles of his mistress at the expense of the people, (he had some monopolies †) the whole tendency of

* Overbury's Travels. The MS. in the Library at Lambeth corresponds with that printed. He travelled in 1609.

† Mr. Hume, in note Q, says, that "Raleigh was thought to lean towards the puritan party;"—and, as they pitied his misfortunes, and complained of his treatment, it was natural for him to wish their support,—his great enemy Essex had courted both Papists and Puritans at the same time, (Cambden in Ken. p. 630.),—but so far was he from supporting them in his writings, that a passage is quoted by Sanderson from his history of the world, p. 219., which is not only

the work is not only to dissuade the prince from raising money or making laws, but from projecting peace or war, or even appointing his ministers, judges, &c. without the interposition of the legislature. Upon such conditions, it might justly gall the pride—though it savours much of the ordinary language, which makes parliament, people, every thing, the king's,—but must be innocuous to the privileges of parliament to say, that the prince exercises absolute power through his grand council; and the following language which the historian has quoted, ceases to have weight:—"*Councillor*, that which is done by the king, with the advice of his private or privy council, is done by the king's absolute power." "*Justice*, and by whose power is it done in parliament but by the king's absolute power? Mistake it not, my lord: The three estates do but advise, as the privy council doth; which advice, if the king embrace it, becomes the king's own act in the one, and the king's law in the other; for without the king's acceptation, both the public and private advices be but as empty egg shells*." In another place, however, the justice is made to use different language. "Except," says he, "England were as Naples is, and kept by garrisons of another nation, it is im-

strong in favour of ceremonies, but is alleged by Sanderson to be prophetic of the evils which afterwards arose from the Puritan party. Sanderson's James I. p. 311. We learn from Mr. Hume himself that Raleigh tried to save his life by feigned madness, &c.

* P. 107, 108. This is the language of the constitution, as we have already repeatedly said.

possible for a king of England to greaten and enrich himself, by any way so assuredly, as by the love of his people." "*Councillor*, Why should not our kings raise money as the kings of France do, by their letters and edicts only? for, since the time of Lewis the XI. of whom it is said that he freed the French kings of their wardship, the French kings have seldom assembled the estates for any contribution. . *Justice*. I will tell you why. The strength of England doth consist of the people and yeomanry, the peasants of France have no courage nor arms: In France, every village and borough hath a castle, which the French call *chasteau villain*, every good city hath a good citadell, the king hath the regiments of his guards, and his men at arms always in pay; yea, the nobility of France, in which the strength of France consists, do always assist the king in his levies, because themselves being free, they made the same levies upon their tenants. But, my Lord, if you mark it, France was never free in effect from civil wars, and lately it was endangered either to be conquered by the Spaniard, or to be cantonized by the rebellious French themselves, since that freedom of wardship *." In another place, where he speaks of the former power of the peerage in regard to the Crown, in comparison with their present, he says: "The force, therefore, by which our kings, in former times, were troubled, is vanished away. But the necessities remain. The people, therefore,

* P. 12, 13.

in these later ages, are no less to be pleased than the peers; for, as the latter are become less, so, by reason of the training through England, the Commons have all the weapons in their hand *."

These passages are sufficient for our purpose, and we shall not encumber our pages with farther quotation on the subject: But content ourselves with observing, 1*st*, That Raleigh took a just view of the political situation of the country, while the monarch and his descendants acted under infatuation in attempting to govern upon the principles of the French monarch, when they neither had the army to second their will, nor such a state of so-

* P. 51. The same idea is inculcated in the two next pages. "I have ever," says the justice, "to deal plainly and freely with your lordship, more feared at home popular violence than all the foreign that can be made." "The power of the nobility being now withered, and the power of the people in the flower, the care to content them would not be neglected; the way to win them often practised, or at least to defend them from oppression, The motive of all dangers that ever this monarchy hath undergone, should be carefully heeded, for this maxim hath no postern, *potestas humana radicatur in voluntatibus hominum.*" Mr. Hume mentions that this work was not published till after the author's death; but we must not thence infer that his style was not so guarded as if it had been published by himself, for it is dedicated to James, and the address is most fulsome. The work is, in many respects, not unworthy of its author; and the effect of his system would have been to give much nominal, no real power to the crown. The whole argument too proceeds upon the assumption, that a more arbitray government than had ever been in England was now attempted.—See p. 110, about illegal imprisonments, which appear to have been numerous. Had Mr. Hume attentively perused Raleigh's performance, he would have discovered his mistake about benevolences, see p. 95, *et seq.*; and likewise in regard to new year's gifts, which appear to have been liberally bestowed upon courtiers. P. 71.

ciety as prevented the great body of the people from acquiring influence, and made it the interest of the nobility, in whom any political power was lodged, to support the measures of the court against the rest of the community;—a fact which appears still stronger, when we consider the frequent resistance to the French system, though it possessed all these advantages. *2dly*, That the very circumstance of this family having attempted to fashion their government by that of France, instead of confining it within the limits of the ancient practice, not to say constitution, is of itself conclusive against the defence which has been made for them,—that they acted upon the principles recognised at their accession.

## CHAP. IV.

*Presenting a Picture of the State of Scotland, together with an Account of the Government of that Country.*

Before the union of the Crowns by the accession of James to the English throne, great part of Scotland was little removed from barbarism, and it resisted improvement till a late period. Even in the most civilized districts of the Low Country, society, in the most important respects, appears not to have attained that degree of refinement which it had reached in England, about two centuries before *. Towns had risen to little comparative eminence; manufactures, by which alone the great body of the people, where the territory is appropriated by a few, can be emancipated from dependence on the proprietors of the soil, were in a state of infancy; and commerce was confined to the importation of a few articles in exchange for staples chiefly, though some coarse manufactures

* The condition of the third estate compared with that of England, down till the reign of James, affords a strong proof of this. See this subject discussed afterwards. Yet, considering the misery England had waded through in changing from one state of society to another, we can scarcely congratulate her on her improvement in some of the preceding reigns.

were also exported*. Large estates resembled petty principalities, the lords of which, while they trampled with impunity on the inferior classes, frequently gave law to the sovereign†. Their feuds were inveterate, and conducted like wars betwixt foreign states: Murders, burnings, plunderings, and devastations disgraced the community, and the aristocracy endeavoured, by formal leagues or associations amongst themselves, to obtain that security—against powerful neighbours often, again, banded for their destruction—which the laws could not afford‡.

* Moryson's Travels, P. iii. B. iii. ch. 4. Spottiswoode's Hist. p. 490.

† Buchanan's Hist. and the first part of the first vol. of Calderwood's Manuscript Hist. in the Adv. Library, present a lamentable picture of society. Spottiswoode's Hist. is a valuable performance for the light it throws on this subject. The little respect paid to royalty is conspicuous in every page of Scottish history. Few of their kings died a fair death: and it seems to have been a matter of great importance to get a prince into their custody. Thus, in 1526, Sir Walt. Scott of Balclugh, or Buccleugh, was anxious to take James V. from the Earl of Angus, and the young king inclined to a change of masters, but the earl's brother, having in vain attempted to prevail with him "by alluring words" to hasten his pace, resorted to a more convincing argument: "rather," says he, "as the enemies take you from us, we must keep one half of your body with us." Calderwood's MS. Hist. vol. i. p. 36. The Earl of Arran wished to get possession of the young queen's person in 1543, "deeming by that means that he should have upon his side, not only the shadow of her name, but also might dispose of her marriage as he thought good, and either feed the English king with promises, or draw him to his partie." Id. p. 167. The repeated attempts to seize King James VI.'s person by Bothwell, not Mary's paramour, are well known, likewise the raid of Ruthven, Gowrie's conspiracy. A lively picture of the tyranny of the aristocracy, and the consequent misery of the people may be seen in the Bas. Dor. p. 160.

‡ As a proof of the state of the country, we may refer particularly to the following authorities. Spottiswoode, p. 61, 62, 70, 186, 187.

During the papal supremacy, the church, it is alleged, though perhaps with some exaggeration, enjoyed nearly half the territory of the kingdom, independently of her immense revenue from tithes, and was of course great and powerful. With that disposition which all bodies of men never fail to

The country was in 1571 convulsed with civil war, and to such a height did faction run, that fathers are represented as having been opposed to their own sons. Even children that could scarcely speak had their plays founded on such distinctions. P. 253—273, 306.—In 1583, the Church represented to the King, that there was a universal murmur, that no man could be assured of his lands, not even life, the laws of the country being wholly perverted; and they regretted the division of the nobles, one party seeking the overthrow and ruin of the other, p. 327.—P. 347, 382, 4, 6, 7, 8, 390, 400-1, 7, 8, 9, 411, blood and slaughter were common, and it was impossible to bring the guilty to punishment. P. 443. James boasted of having drawn Scotland out of infinite troubles, factions, and barbarities. P. 488.—He recommends to the Council (an. 1603,) to remove barbarous feuds, and prohibits the custom of entering into associations for mutual security, and as presumptuous in subjects, who should depend on the laws, p. 490—496, 504, 510, 528. Calderwood's MS. Hist. Vol. I. first part of it, he says, that in 1514 the country was greatly disquieted with robbery, slaughter, and oppression. The country was rent with faction; bands and confederacies were common, and it was not accounted the greatest evil that M'Robert Stroven overran Athole and the adjacent counties with 800 thieves, and sometimes more. P. 4, *et seq.* See p. 44, *et seq.* for the subsequent state of the kingdom. See also his Printed Hist. p. 129 to 132. P. 142, 149. Mr. R. Bruce admonishes the king to execute justice upon malefactors, *at the hazard of his life.* For that the Lord would assist him, if he prayed to him for resolution; but that if he did not act so, "he would not be allowed to enjoy his crown alone, but every man would have one." 265. Bothwell's attempt upon Falkland Palace, accompanied by borderers. 271. The raid of Leith, and other matters. 298, 306. In p. 319, a most horrible picture is presented. Johnston, p. 55, 73.

possess, and which, with little truth, has been imputed in a greater degree to the clergy than to other incorporations, the church was ambitious for pre-eminence, and naturally embraced overtures from the throne for repressing the exorbitant power of the aristocracy, hurtful alike to the pretensions of both *. From their habits, less powerful in arms than their territory would otherwise have promised, the clergy yet far outstript the nobility in knowledge and industry; their number and influence in Parliament were great, and as they generally filled the high offices of state †, for which their superior mental attainments qualified them, they could give such a strong direction to the current of affairs as to render them potent allies to the throne. The arrogant pretensions and wealth of the Scotch church under the papal system have been a fruitful theme of declamation; but it would argue little knowledge of human affairs not to admit, that, in former times, her power was salutary. Land, in her possession, could not be more injurious to the general interest than in the hands of a haughty aristocracy: on the contrary, there is every reason to believe that

* See Stuart's View of the Reformation.

† Calderwood, in his MS. History, Vol. I. p. 1, *et seq.* says, that the prelates were introduced into all civil offices of importance, after the battle of Flowdon Field, because there did not remain a sufficient number of the nobility qualified to fill them. See Sir Ralph Sadler's Letters and Negociations, p. 61. Sir Ralph, by order of his master Henry VIII. advised James V. to seize upon the religious houses to increase his revenue, but James would not listen to the sacrilegious proposal. P. 37. *et seq.*

her vassals were far more independent than those of the nobility, an incorporation being ever the best landlord; and it was their interest equally with that of the Crown, to counterpoise the strength of the nobility by supporting the privileges of the lower orders. But her attachment to the throne, in opposition to the aristocracy, provoked their hatred, as her wealth excited their cupidity, and these passions burst into action the instant the reformation promised to gratify them.

Anno 1400, according to Spottiswoode.

The opinions of Wickliffe had, in the beginning of the fifteenth century, penetrated into Scotland*; but the soil was not yet ripe for their reception. When the Reformation had begun to convulse the rest of Europe, it reached that country, though somewhat later than it had done the sister kingdom; and, as usual, the attempts to arrest its progress by persecution, gave it additional vigour †. Such a grand movement of the human mind could not want a leader, and in Knox it found an able and a zealous one. Not to him, however, but to the natural course of events, is its peculiar direction in Scotland to be ascribed. In England, the

* See Knox's History of the Reformation, p. 1. *et seq.* Spottiswoode, p. 56. Calderwood, MS. in Advocates' Library, Introd. p. 93. Printed Hist. p. 1.

† Spottiswoode, p. 62 to 65. Calderwood's MS. Hist. p. 58 and 9. Stuart's Hist. of the Reformation. Yet in 1560, when the Reformation had gained considerable ground, the Popish prelates were silent in Parliament while the Catholic doctrine was assailed: Upon which the Earl Marshal observed, that he had been formerly jealous of the Romish religon, but was now confirmed in the truth of the new doctrine, since the Catholic Bishops could say nothing in favour of the Pope. Spottiswoode, 150.

sovereign, placing himself at the head of the Reformation, was enabled, from the peculiarity of his situation, to preserve episcopacy against the wishes of the people. In the other country, the power of the sovereign was too limited to stem the torrent, and as she vainly endeavoured to withstand the innovation altogether, it necessarily took that direction which the influence of the Prince had prevented on the southern side of the Tweed. Nor is its course less to be attributed to the selfishness of the aristocracy, and even of part of the Protestant ministry, than to the piety of the people, and the rest of their pastors. The plunder of the English church had whetted the cupidity of the Scottish aristocracy, who were sufficiently predisposed against the clergy, and who descried, in the downfal of bishoprics, abbeys, &c. great accession of territory and wealth to themselves *: The

* This may be fairly inferred from their conduct: and they are charged directly with preferring the Presbyterian Establishment from the hope of plunder. Johnston, Hist. Rer. Brit. p. 16. Ed. 1655. Spott. p. 86. "The gentlemen of the west complain of the oppressions of churchmen, and a proclamation to attend the borders in a service against England affording a pretext, some of them entered the Queen Regent's chamber, and one Chalmers of Gaitgirth said, "We know, Madam, that this is the device of the Bishops, who stand by you: We avow to God it shall not go so, they oppress us and our poor tenants for feeding their idle bellies, they trouble our preachers, and seek to undo them all: We shall suffer it no longer. *With that every man made to his weapon.*" P. 94-5. What followed? "To our great grief," said the reformed clergy, "we hear that some gentlemen are now more rigorous in exacting tythes and other duties paid before to the church, than ever the Papists were, and so the tyranny of priests is turned into the tyranny of lords and lairds." P. 164. The aristocracy obtained almost the whole patrimony of the kirk into their

Protestant clergy had avowedly, at the same time, expected the property or patrimony, as it was called, of the *kirk*, as the reward of their piety*.

own hands, and they afterwards supported episcopacy from the same motives that they at first desired its overthrow—to get possession of the church's revenue. See Address to the Reader, by the Editor of Calderwood's Hist.—. That there was then much genuine piety in Scotland, every one acquainted with the history must admit; yet many of the aristocracy seem to have been so guided by interest, and were so tyrannical and cruel in their conduct, that one might have almost said to them as the unfortunate Earl of Essex did to Tyrone, who talked of his conscience and religion. "*You* mention religion. You have no more religion than my horse." Moryson. Huntly, for instance, had proclaimed himself a Protestant, and yet, to win favour with Queen Mary, he turned Papist again. Spottiswoode, p. 175. See p. 187. Profane swearing and the use of God's name were common. Calderwood, 318.

* Johnston says, that when the parity of pastors, according to the platform of Geneva, was once broached, there were two sects of men eager for it:—Laics, who supposed this the direct way to obtain spiritualities into their own disposal; and the clergy, who expected to raise themselves into greater honour. Hist. Rer. Brit. P. 16. Spottiswoode, p. 159, 160, 164, particularly the last; 187, 199, 209—10. The clergy maintained, "that the patrimony of the church consisted of lands, buildings, possessions, annual rents—besides tythes, manses, glebes, and the like, together with all that ever has been given to the church, or that may in future." Spottiswoode, p. 297. "To take any part of this patrimony by unlawful means," say they in their form of church policy presented to Parliament, an. 1578—"and convert to the particular and profane use of any person, we hold a detestable sacrilege before God." P. 297. Calderwood informs us, and he is the most unexceptionable authority, as being of the party obnoxious to the court, that the ministry acquiesced in certain regulations for their stipends, till the church came into full possession of her own patrimony, the tithes. P. 43. Spottiswoode is condemned for his severe censure of the Presbyterian party, after their disgraceful schism in the Presbytery of St. Andrew's. "On this occasion," says he, "men noted, that of all men none could worse endure parity, and loved more to command, than they who had introduced it into the church." P. 387.

The former succeeded in their hopes *; the latter in vain, by the loudest and frequently-reiterated complaints of sacrilege, tried to rouse in favour of the church, the, in this respect, languid religious feelings of men of influence and property †.

The first book of discipline, containing the principles of the reformed religion, was subscribed by many of the nobility and barons; but on the express condition, that the bishops, abbots, priors, and other prelates, should continue to enjoy their livings. The consequences might easily have been anticipated. The Popish Church had devised many checks to prevent dilapidations of her property by beneficed men: But these operated no longer; and the prelates naturally embraced the opportunity of enriching their relations by feus

* Were we to quote authorities for this, our pages would be crowded, and we shall have occasion to quote authorities in support of the statement afterwards. But to shew how early avarice had been successful, we may observe, that in 1560 the clergy petitioned the Parliament on sundry points—one of which was, "That the Pope of Rome's usurped authority should be discharged, and the patrimony of the church employed for the sustentation of the ministry, the provision of schools, and entertainment of the poor, of a long time neglected. This last clause was not very pleasing to divers of the nobility, who, though they liked very well to have the Pope's authority and doctrine condemned, had no will to quit the church's patrimony, wherewith, in that stirring time, they had possessed themselves." Spottiswoode, p. 150. See p. 160, 164, 175, and so forth. Calderwood is equally explicit on this head.

† Spottiswoode, p. 164, 209. See quotations above, from p. 297—298, 301 and 2, 385, 6. Every assembly was employed about the preservation of the patrimony. Knox maintained that tythes were of divine institution. Spottiswoode, p. 86. Calderwood's History is full of regulations and complaints about the patrimony.

and tacks or leases, equally of lands and tithes, at nominal or quit-rents. It is probable, too, that many might forsake the celibacy to which they had been bound, and use the advantage of their situation to provide for their families. It appears likewise, that many grants were made by beneficed men to the very individuals who subscribed the book of discipline, in order to purchase security by their protection to the remainder of the livings *. When Mary ascended the throne, as the

* Spot. p. 175. In 1560, the Book of Discipline was subscribed by a great part of the nobility and barons, under the condition of the bishops, abbots, priors, and other prelates, being permitted to enjoy their livings. Calder. p. 30. As for their motives, see Introduction to Calderwood by the Editor, who tells us that James's design of restoring episcopacy was seconded "by some nobles and great men of the kingdom, who were greedily gaping and grasping at the revenues of the church, which they could not so easily come by, unless there were some particular, and, as they were then called, Tulchan Bishops kept in the church, who being, to some satisfaction of their lustful avarice and pride, gratified with the title, and a little addition to their former maintenance, might the more easily let down the milk, and make a sure conveyance of the far greater part of the benefices to the sucking Lords." But before the great dilapidation of the church's patrimony, this principle operated far more strongly. Mr. P. Adamson, who was disappointed in not getting the bishopric of St. Andrew's, in his sermon divided bishops into three sorts, "My Lord Bishop, my Lord's Bishop, and the Lord's Bishops. My Lord Bishop was in time of papistry, my Lord's Bishop is now, when my Lord getteth the fat of the benefice, and the Bishop serveth for a portion out of the benefice, to make my Lord's right sure. The Lord's Bishop is the true member of the Gospel." Calderwood, p. 55. See p. 47, 51, 56, 57, 64, 124, 135—6, 142. One of the severest charges against the bishops in 1583 was, that some of them were sacrilegious dilapidators of their whole benefices, p. 157.—309. We learn from 319, that there was sacrilege in all estates, without making any conscience, p. 321—2, 328. Spottiswoode, p. 164, 175, 183, 209—10, 298, 301—2, 311, 327, 387.

church livings could not be conferred upon Popish clergy, she bestowed them on the laick minions of the court. "The patrimony of the kirk," says Knox, "bischopricks, abbyes, and such other benefices, were disposed by the Quene to courtiers, dancers, and flatterars. The Erle of Bothwell, quhom the Quene preferred above all uthers, efter the decease of David Rizio, had, for his part, Melrose, Hadington, and New Bottel*." As such individuals could have no interest in maintaining the property of the church, and were shackled by impotent restraints, they naturally improved their time by securing as much of it as possible. With regard to monasteries, they were destroyed, and the abbots and priors became temporal lords, voting in the name of the church. Under the subsequent regencies, it was resolved to preserve the estate of bishops during the King's minority, because it afforded a source of influence and even of revenue to the Regent, by whom the most simoniacal pactions for livings were made †. After

* Knox's History of the Reformation, p. 396. This would appear to have been an early practice—long before the Reformation. Spottiswoode, p. 60.

† Calderwood, p. 48, 56, 64. Morton, Regent, attempted to win Andrew Melville to Episcopacy—in order to effectuate a conformity with England, as he despaired to govern according to his wish without it. "If he found ministers apt, he purposed to advance them to bishoprics." P. 66. As to the abbots, priors, &c. turning temporal lords, see Spottiswoode, p. 365. Calderwood, p. 102.—The monasteries were disgracefully plundered. Calderwood is anxious to establish that it was only the "*rascal* multitude" that committed the robbery; but who set them on? He has preserved a letter which was penned and divulged a little before, in the name of the lame, the blind, &c. somewhat like the petition of the beggars to

the majority of James, the annexation by Parliament of church lands to the Crown, under the pretext of increasing its revenue, and the after-transference of part of it to favourites, together with the confirmation of the previous grants, whether of land or tithes, to the possessors, for ever bereaved the church of the best part of her patrimony*. To the alienations of tithes, the practice, under the Romish religion, pursued by patrons, of annexing or impropriating churches, with their tithes, to particular bishoprics, abbeys, &c. by which a vicar was supplied, had greatly contributed †. It being as impossible for a bishop or abbot to draw the tithes of several parishes as to farm the territory, leases of them became absolutely necessary: But, under the old system, the consent of the chapter was requisite for the bishop, that of the abbey for the abbot, and these checks were strengthened by the corrective power of his Holiness, who had too deep an interest in the general welfare of the church to permit alienations of her property ‡. The Reformation removed

Henry VIII.—Som. Tracts, Scott's Ed. Vol. I. 103, 104, which was evidently calculated to stir up the people. Calder. MS. Vol. II. p. 497. See an account of the destruction in p. 516. Knox himself is said to have observed, (Spot. p. 170.) that the sure way to destroy the rooks was to pull down their nests, and the observation was sound. But the plunder of the monasteries, though so much censured, was the most excusable of all the plunders then committed.

* See Spottiswoode, p. 365, 385—7.

† See Blackstone's Commentaries. There had apparently been a vast number of annexations in Scotland.

‡ In a work, entitled "The assurance of abbey and other church lands in England to the possessors, cleared from the doubts and ar-

these shackles, and the Protestant clergy daily saw their prospects vanish. But hope remained: They loudly demanded restitution, and a repeal of the act of annexation; declaring with perfect truth, that unjust possession was no possession before God; and labouring to impress a conviction of the horrid sacrilege which had been committed. Nor did they neglect any means within their power calculated either to stop the farther progress of the evil, or to regain their lost rights: And they made a special proviso in favour of those whose charity and piety should lead them to bestow gifts upon the church*. This conduct was perfectly natural and, therefore, pardonable; but it ought to moderate the tone of that class of

guments about the danger of resumption, &c." it is maintained, that by the canons of the church it was not necessary: but it is clear even from that production, that the Pope was in the practice of interfering, and that there were canons against alienations, p. 17 and 18. In 1578, the church represented, that seeing they "who were of old called the chapters and convents of abbeys, cathedral churches, and the like places, serve for nothing now but to set feus and leases of lands, (if any be left,) and tythes, to the hurt and prejudice thereof, as daily experience teacheth,—the same should be abolished." Spottiswoode, p. 298.

* The Assembly enacted, that all ministers who dilapidated their benefices should be excommunicated. Calderwood, p. 91. In the passages already referred to, the fullest confirmation of our text will be found. The church represented strongly, that her patrimony should be restored; and, say the clergy, "If any shall think this prejudicial to those that possess the tythes by virtue of leases, we would have them consider, that unjust possession is no possession before God; and that those of whom they acquired the right were thieves and murderers, and had no power to alienate the patrimony and common good of the church." Spottiswoode, p. 164, 165. See also other passages already referred to.

people, who impute such extraordinary disinterestedness to the primitive Scotch reformers, from the smallness of their stipends, and such profligacy to the Romish clergy from the extent of their possessions. If the livings of the Protestant clergy were small, they struggled to make them very large. If one church had been ambitious in acquiring, the other was no less so in its desire of retaining, and even of adding to, that immense property. But it may fairly be questioned whether, considering the state of the country at that time, the stipends of the Protestant clergy, small as they were, ought not to be deemed an adequate compensation to candidates for church preferment. The sums allotted to the majority of pastors appear insignificant now, but, as the scarcity of money was then extreme, the habits of life totally different from what we are accustomed to, the openings for active talent without capital in other departments, so very limited, that the most aspiring genius saw itself doomed to poverty and neglect, an income, trifling in our time, conferred comparative riches. If, with this, we consider the respect then paid to the clergy, and the power which belonged to their body, we may affirm that, as they were, generally, not of high origin, they derived an infinitely more exalted station in society by the church than they could possibly have reached by any other profession.

The Presbyterian church is founded upon parity in the pastors; yet, at first, the paucity of fit ministers of religion rendered it necessary to admit

some superiors under the name of superintendants, for the purpose of visiting, planting, and reforming kirks, which afforded afterwards an argument to the court party, that episcopacy was by this means preserved in substance, and parity amongst ministers, of consequence, not originally intended. Though, however, some features in the office of superintendant bore a striking analogy to that of bishop *, there seems to have been an essential difference in the constitution of the offices. But, it is well remarked by Calderwood, that "in process of time, the like inconveniences would have followed upon the office of superintendants, as was like to follow upon the office of bishops †." Hence it is probable, that to the ambition and dextrous talent of a few individuals, may be traced an analogy between the offices, which, speciously veiled at the time, would, at a future period, have had a mighty influence on the establishment.

The government of the church by presbyteries, synods, and assemblies, was finally established by the legislature in the year 1592‡; and though vacant bishoprics continued to be supplied, the incumbents were not permitted to claim superiority over

* See Spottiswoode, p. 159. particularly p. 258.

† See Calderwood, as to the office, p. 26-7, 32. See p. 45, regarding commissioners for visiting kirks, which throws light upon this subject. New ones were to be chosen by every assembly. See M'Crie's Life of Knox, Vol. I. p. 386, *et seq.* Vol. II. p. 283, *et seq.* The words quoted in the text in p. 69.

‡ 12th Parliament of Ja. VI. c. i. Calderwood, p. 268. But there were all kinds of assemblies from almost the commencement of the Reformation. Calderwood, p. 29, 32, 37, 43, &c.

other pastors *. Even this, however, gave offence to the rest of the clergy who laboured for its abolishment, and James himself affected to be a zealous Presbyterian. In 1590, addressing the General Assembly, "he praized God that he was born in such a time, as in a time of the light of the Gospel; to such a place as to be king of such a kirk—the sincerest kirk in the world: the kirk of Geneva keepeth Pasch and Yule, what have they for them? They have no institution. As for our neighbour kirk in England, their service is an evil said masse in English, they want nothing of the

* Calderwood, p. 56, tells us, that the first bishop after the Reformation was Douglas, nominated by the Regent Morton to the See of St. Andrew's, for that the old bishops were not permitted to exercise their functions. "It was easy," says he, "to obtain the consent of many ministers to this sort of episcopacy, some being poor, some being covetous and ambitious, some not taking up the gross corruption of the office, some having a carnal respect to some noblemen their friends." Ib. But he derived small profit from his bishopric, "Morton and his friends took up great part of his rent in tacks, feus, and pensions." The minister was likewise of a feeble frame, "and not much abler in his tongue, yet little respect had the court to the abilities of his person, so that commodity could be reapt by virtue of his title," p. 57. The author represents Knox as hostile to the measure, and it would appear that he was so, yet Spottiswoode imputes the doctrine of parity in the church to Andrew Melville, p. 275. In 1586 it was agreed upon that the election of bishops should be by presentation, directed to the General Assembly. Calderwood, p. 197. The General Assembly agree this year, that it is lawful to admit a *pastor*, minister, or bishop, having a benefice, who has been presented by the king to the same. Calderwood, p. 207. See Spottiswoode, p. 275-6. In 1580, the General Assembly, held at Dundee, "conclude, that the office of a bishop, as then used, had neither foundation nor warrant in the word of God, and that all called, or who should be called to that office, should demit till re-admitted into the church by the Assembly." Spottiswoode, p. 311, 468. Calderwood, to the same effect, p. 66, 85, 90-1.

masse but the liftings. I charge you, my good people, ministers, doctors, elders, nobles, gentlemen, and barons, to stand to your purity, and to exhort the people to do the same, and I, forsooth, so long as I brook my life and crown, shall maintain the same against all deadly *." Yet, such was the insincerity of this monarch, there is reason to believe that he had even then determined on the subverting of this purest of all institutions, which he charged the people, and so solemnly pledged himself to maintain. For, in his work, entitled, "Basilicon Doron," printed and *clandestinely circulated* a few years afterwards, and which must have cost time in the composition, he contends, that "parity amongst ministers cannot agree with monarchy, that without bishops the three estates cannot be established; that ministers sought to establish a democracy in the land, and to bear the sway of all the government; that by time they hope, by the example of the ecclesiastical policy, to draw the civil to the same parity. That no man is to be more hated of a king than a proud puritan; and that the chief of them are not to be allowed to brook the land †."

His opinion of the ambitious views of the clergy was not destitute of truth. Popular government and extraordinary times call forth talent,

* Calderwood, p. 256.

Calderwood, p. 357, assures us the king had early formed the resolution of restoring episcopacy.

† I have quoted this from Calderwood, in order that the reader may be satisfied of the views of parties, p. 428. Seven copies only of the Bas. Dor. were printed on the first edition. M'Crie's Life of Melville. Vol. II. Note I.

and, notwithstanding the ridicule which some ingenious authors have attempted to throw upon the Scotch clergy of this period, there are many traces of profound ability and extensive learning *. But, like all bodies of men, their ambition was fully commensurate; and their influence with the people promised success to their schemes. Their language and proceedings plainly indicated a claim to papal power, as well as infallibility, by means of their assemblies †; they arrogated the right of discus-

* Whoever will take the trouble to read the church histories of the time must be satisfied of this.

† In the second declinature of Black, of the king and council, at least *primâ instantiâ*, it is said, that God has given the keys of the kingdom of heaven to the church, and that the clergy were empowered "to admonish, rebuke, convince, exhort, and threaten, to deliver unto Satan, to lock out and debar from the kingdom of heaven." Calderwood, p. 347. In February 1597, certain questions were proposed by the king at the Convention of Estates and General Assembly, held at Perth, from which we shall select a few, with the answers of the clergy.—Q. Who should establish acts for the external government of the kirk?—A. The pastors and doctors, according to the word of God, and "kings and princes ought, by their authority, to ratify and approve that by their laws, and *vindicate* by their civil sanction, which *they declare* to be God's will out of his word." They had formerly contended that the right of electing pastors should be vested in the congregation; but to a question as to where it should reside, they now reply, that "election of pastors should be made *by pastors and doctors* lawfully called, and who can try the gifts; and to such as are so chosen, the flock and patron *should give their consent.*" Calderwood, p. 383. To the query, another answer, by a different person of the Committee appointed for the purpose by the Assembly, was given, and which the author calls judicious, "The presentation of the patron is merely a human institution, and importeth no necessity of consent, but the consent of the flock is necessary." P. 390. To a query regarding the election of the Session, it was answered, That "the ministers *direct* and *moderate* the election by the word,

sing state affairs in the pulpit, and of arraigning all men, from the cottage to the throne, upon even bruits

and the congregation *obeyeth and giveth consent.*" P. 384. They likewise assert, that the Assembly may be convened by the office-bearers of kirk, *because they derive their right from God only.* P. 385.—Q. 29. "May any thing be acted in the Assembly to which his Majesty consenteth not?—A. "*The king should consent to, and by laws approve all that by the word of God is concluded in the Assemblies;* and the acts thereof have sufficient authority from Christ, who has promised, that whatsoever two or three convened in his name, shall agree upon, on earth, shall be ratified in the heavens; the like whereof no king nor prince hath, and so the acts and constitutions of the kirk are of greater authority than any king earthly can give; yea, even such as should command and overrule kings, whose greatest honour is to be members, nursing fathers and servants to this king, Christ Jesus, and his house and queen, the kirk." P. 386. J. Melville's Memoirs, MS. P. 293, *et seq.* Did ever papal arrogance exceed this? Yet, when a question was put, whether the voice of the majority should be decisive of a question, the clergy, who apprehended that a majority might be gained over by the court, evaded the question, and charged the king with a wish to sow dissention. The following passage, from Calderwood, will afford a juster picture of the temper and aim of parties than any representation of ours. At a conference between the king and some ministers in 1596, "Mr. James Melville, their mouth, shewed that the Commissioners appointed by the General Assembly to watch in so dangerous a time, had convened with certain of the brethren at Cupar. The king interrupted him, and challenged the meeting as seditious, and without warrant, and said, they made themselves and their country conceive fear, when there was none. Mr. James began to reply, after his mild manner, but Mr. Andrew taketh the speech from him, and, howbeit the king was in anger, yet he uttered their commission *as from the mighty God. Called the king God's silly vassal, and taking him* by the sleeve, said this in effect: Sir, we will humbly reverence your majesty always, namely, in public, but we have this occasion to be with your majesty in private, and you are brought in extreme danger, both of your life and of your crown, and with you the country and kirk of God is like to be wracked for not telling you truth, and giving you a faithful counsel. We must discharge our duty, or else be enemies to Christ and you. Therefore, Sir, *as diverse times before, so now I* must tell you, that there are two kings and two kingdoms.

or rumours, and uncertain informations *; and the jurisdiction claimed for the church was separated

There is Christ and *his kingdom, the kirk*, whose subject King James VI. is, and of whose kingdom he is not a king, nor a head, nor a lord, but a member; *and they whom Christ hath called, and commanded to watch over his kirk, and govern his spiritual kingdom, have sufficient authority and power from him to do so, which no Christian king should control nor discharge, but fortify and assist*, otherwise they are not faithful subjects to Christ. Sir, when you were in swaddling clouts, Christ reigned freely in this land in spite of all his enemies. His officers and ministers convened and assembled for ruling of his kirk, which was ever for your welfare also, when the same enemies were seeking your destruction; and have been, by their assemblies and meetings since, terrible to these enemies, and most steedable to you: Will ye now, when there is more than necessity, challenge Christ's servants, your best and most faithful subjects, for their convening, and for the care they have of their duty to Christ and you, whenas you should rather commend and countenance them as the godly kings and emperors did? The wisdom of your council, which is devilish and pernicious, is this, that you may be served with all sort of men to come to your purpose and grandeur —Jew, and Gentile, Papist, and Protestant. Because the ministers and Protestants in Scotland are too strong, and control the king, they must be weakened and brought low by stirring up a party against them, and the king being equal and indifferent, both shall be fain to flee to him: so shall he be well settled. But, Sir, let God's wisdom be the only true wisdom; this will prove mere and mad folly," &c. P. 329, 30. I have taken this from Calderwood, instead of transcribing from James Melville's Memoirs in MS. in the Advocates' Library, from which Calderwood himself transcribed it. But I have compared the two, and have found that they agree in every thing material. See MS. p. 140, 276, *et seq.* Calderwood was one of the keenest on the same side with the Melvilles and their great admirer. He approves highly of Andrew Melville's conduct on the above occasion. By the way, one cannot help being amused with these affectedly moderate men's fondness for title. While they designate the greatest landed proprietors by their Christian names, John, Andrew, &c. they never, on any occasion whatever, omit the word Mr. before the name of one of the brethren.

* We learn from Spottiswoode, p. 343, that in 1586 one of the clergy, Gibson, called the king a persecutor, and denounced the curse

by no definite line from that of other courts; but under the pretext of censuring immorality, embraced almost every offence against morals or society *. Nor could even unjust ecclesiastical cen-

that fell on Jeroboam, that he should die childless, and be the last of his race. The chancellor advised, (p. 347.) the king to allow the ministry to go on, for that they would soon become so intolerable that the people would drive them out of the country. The king replied, that if he wished the "ruin of religion, he would adopt that plan; but he wished it well." Yet James appears not to have been burthened with religion at any time, for besides being "bloated with banning and swearing, the clergy agreed that he should be admonished to forbear hearing of speeches in time of sermon of them that desire to commune with his majesty." Calderwood, p. 317, 318. See Calderwood, p. 383, 384, concerning the right of the church to mention men's names in the pulpit, even on bruits and rumours. See Spottiswoode, p. 429, *et seq.* about the discussion of politics in the pulpit. See J. Melville's Mem. or Diary, MS. p. 295.

* Calderwood, p. 388, as to the offences, &c. See p. 336, 340, 347 to 349. Spotts. p. 419.

The clergy strenuously tried to exempt their order from civil jurisdiction for things uttered from the pulpit on civil affairs and characters; but, as this was afterwards pointedly denied, we shall prove it. Mr. D. Black was charged with having said from the pulpit that the popish lords had returned from banishment with the King's knowledge, and upon his assurance, and that he, the King, had thereby "detected the treachery of his heart." 2dly, With having called "all kings the *divell's bairns*, (children,)" adding, "that the *divell* was in the court, and in the guiders of it." 3dly, With having used these words in his prayer for the Queen, "We must pray for her for the fashion, but we have no cause, she will never do us good;" (by the way, was this the sincerity which a pastor ought to maintain in addressing the Deity? The fashion!) 4thly, With having called the Queen of England an atheist; 5thly, With having discussed a suspension granted by the Lords of Session, and called them miscreants and bribers; (from the corrupt state of justice in Scotland at that time, of which there is ample proof, the terms were not misapplied.) 6thly, With having called the nobility degenerate, Godless, dissemblers, and enemies to the church—and the council, "Holliglasses, cormorants, and men of no religion." &c. Spottiswoode, p. 423-4.

sures be then as now despised. Excommunication by statute inferred civil rebellion by outlaw-

The English ambassadors complained, p. 419. Mr. Black was summoned before the King and council; and here we may observe that the present case is altogether independent of any question about the powers of the council as a court of judicature, for Black's ground of declinature was its being a civil jurisdiction. The clergy, with Andrew Melville at their head, took the matter up as one of vital importance to the church, as tending to bring the doctrine of all ministers under the censure and controlment of his Majesty and council: and it was resolved that he should decline the judicature, "and that all the brethren be exhorted to seek out all the warrants of Scripture, or positive laws to prove that the judgment of the doctrine whatsoever pertaineth to the pastors of the kirk, *in primâ instantiâ.*" P. 335. Others had declined civil jurisdiction before, but Black was advised to give in his declinature with his reasons in writing, that it might serve as a precedent against similar attempts by the court, p. 336. This was accordingly done, and Black, after stating generally, that, in all civil matters he subjected himself to the civil powers, says, "Yet seeing I am at this time brought to stand before his Majesty and council, as a judge set to cognosce and decern," (try and decree, or adjudge,) "upon my doctrine, whereof my answering to the said pretended accusation might import, with the manifest prejudice of the liberties of the kirk, an acknowledgment of your Majesty's jurisdiction in matters that are mere spiritual which might move your Majesty to attempt farther in the spiritual government of the house of God, to the provocation of his hot displeasure against your Majesty, and, in the end, either a plain subverting of the spiritual judicature, or at least a confounding thereof with the civil, if, at any time, profane and ambitious magistrates might, by such dangerous beginnings, find the hedge broken down to make a violent irruption upon the Lord's inheritance, which the Lord forbid. Therefore, I am constrained, in all humility and submission of mind, to use a declinature of this judgment, at least *in primâ instantiâ.*"

"The Lord Jesus, the God of order, and not of confusion, as appeareth evidently in all the kirks of the saints of whom only I have the grace of my calling, as his ambassador, albeit most unworthy of that honour to bear his name among the saints, hath given me his word, and no law or tradition of man, as the only instructions whereby I should rule the whole actions of my calling in preaching of the word,"

ry; and with such keenness was the right of inflicting this punishment maintained, that the as-

&c.: "and, in the discharge of this commission, I cannot fall in reverence of any civil law of men, but in so far as I shall be found to have passed the compass of my instructions, which cannot be judged, according to the order established by that God of order, but by the prophets whose lips he hath appointed to be keepers of his heavenly wisdom, and to whom he hath subjected the spirits of the prophets. And now seeing it is the preaching of the word whereupon I am accused, which is a principal point of my calling, of necessity the prophets must first declare whether I have keeped the bounds of my directions before I come to be judged of your Majesty's laws for my offence." He concludes, therefore, that his case must first be tried by the Ecclesiastical Court. Calderwood, p. 337, *et seq.* To what this must have led is evident: yet it has been alleged that the declinature was only in the first instance, and that the civil jurisdiction remained entire. But I would ask any man to say whether the obvious meaning is not, that if he had been declared "by the prophets" not to have transgressed, the civil jurisdiction could not have interposed? and granting the reverse, to what would this have tended? Surely to a far greater confusion than the direct course of leaving civil matters to civil courts.—Could a court, pretending to divine power, yield to a human? But the sequel puts the matter beyond all doubt. James would have given up the case if the clergy would have departed from their declinature; instead of accepting the terms however, they gave an explanation, that they did not mean to exempt from civil jurisdiction any matter or cause civil and criminal, committed by whatsoever persons, and justly pertaining thereto, "not contrary to the word of God, but only in matters and causes spiritual, of persons bearing a spiritual function in the kirk, and spiritual kingdom of Jesus Christ, in discharging the points of their office and duty spiritual; as, namely, preaching of the word, &c. the laws and instructions whereof as they have received from Christ, only set down in the word, and from no king nor civil magistrate earthly, so ought they to be censured and judged by the same word allenarly, (only,) and such as have their lawful calling in the interpretation and opening up of the same." P. 340-1. As the case could not be quashed, Black gave in a second declinature, adhering to his former, and stating farther, that there are two jurisdictions, one civil, the other spiritual, appointed by God, and which could not be altered by man:

sembly declared that the king had as little power to relax a notoriously unjust sentence as to pro-

That God had effectually called his office-bearers and ministers to whom he has concredited the preaching of the evangelists, 1 *Cor.* ix. "Whom he has placed in their spiritual ministry over kings and kingdoms, to plant, to pluck up by the roots, to edify and demolish. *Jer.* i. to cast down strongholds, and whatsoever lifteth itself up against the knowledge of God, 2 *Cor.* x. Unto these he has given spiritual armour for that effect, and to take revenge of all stubborn disobedients, ib. Whom he has commanded not only to preach the word, and to be constant in season and out of season. 2 *Tim.* iv. but also to cut the word aright, giving the dutiful part and portion thereof to every degree and sort of men. *Mat.* xxiv. 2 *Tim.* ii. to admonish, rebuke, convince, exhort, and threaten. 2 *Tim.* iv. To deliver unto Satan. 1 *Cor.* v. 1 *Tim.* i. To bind the impenitent in their sins, to lock out and debar from the kingdom of heaven. *Mat.* x. *John* xx. To whom he has given the keys of the kingdom of heaven. *Mat.* xvi. and power to assemble themselves to this effect. *Mat.* xviii. *Acts* xv. 1 *Cor.* xiv. promising his presence and assistance. *Mat.* xxviii. And, to be short, the spiritual administration, as he has put it in their hands, making them judges to try and cognosce in spiritual matters. 1 *Cor.* xiv. even so he chargeth them with vehement attestations by the great God, and glorious coming of the Prince of Pastors. 1 *Pet.* v. to do these things without respect of persons, with all attention. 1 *Tim.* v. vi. 1 *Pet.* v. *Tit.* ii."

"And therefore, in so far as I am one, howbeit most unworthy, of the spiritual office-bearers, and have discharged my spiritual calling, in some measure of grace and sincerity, *should not, nor cannot, be lawfully judged, in spiritual matters, for preaching and applying of the word of God, by any civil power, authority, or judge, I being an ambassador and messenger of the Lord Jesus, Malach.* ii. *having my message and commission from the King of kings, as said is, and all my instructions set down and limited in the book of God, that cannot be extended, abridged, or altered by any mortal wight, King or Emperor.* 2 *Tim.* iii. *Deut.* iv. *Prov.* xxx. *Rev.* xxii. And seeing I am sent to all sorts of men, to lay open their hid sins, to preach the law and repentance, the Evangel, and forgiveness of sins, and to be a savour of life unto life to those that are appointed for life, and a savour of death unto death to those that are appointed for death. 2 *Cor.* ii. my commission, the discharge and form of delivery thereof, *should*

nounce it *. Such lofty pretensions were as irreconcileable with good government as with the *jus divinum* of kings; but, as at that time, justice was "lame as well as blind" in Scotland; and the bulk of the people laboured under the most galling oppression, a system founded upon popularity promised them relief. Yet it is not wonderful that

*not, nor cannot, be lawfully judged by them to whom I am sent, they being as both judge and party, sheep and not pastors: to be judged by this word, and not to be judges thereof.*" P. 347-8. Did ever any thing, in any age or nation, surpass this? With regard to their texts, I cannot help remarking that Shakspeare must have had a less ambitious set of men in his eye when he so happily said,

"In religion,
What damned error, but some sober brow
Will bless it and approve it with a text."

The excellence of the passage will form my excuse for quoting any thing so hackneyed. James, too, could quote texts for his worst usurpations.

* Calderwood, p. 389. In how many forms have the pretensions of the church, and it is by no means singular, exhibited themselves. See Telemaque, Liv. xxiii. To a question of Idomeneus about religion. "Pourquoi, lui répondit Mentor, vous mêleriez-vous des choses sacrees? Laissez-en la decision aux Etruriens, qui ont la tradition des plus anciens oracles, et qui sont inspirés pour être les interprètes des Dieux," &c. The sentiments are much the same as those of the Scotch clergy.

In Barrow's Sermons "of Obedience to our Spiritual Guides," we meet with similar pretensions. It is true that they are qualified in the last sermon; but the qualification is clearly meant to meet objections founded upon the assumed infallibity of the Romish Church. Admit his principles in the first place, and the qualification is an insult to the understanding. The inimitable Fielding makes Booth observe, that an angel might be said to have guided Barrow's pen in certain of his sermons; but, perhaps, the reader may be of opinion, that it was a fallen one, in the case of those referred to.

the power of the church clashing with that of the throne, should have kindled a desire in the monarch to repress it; and had James and his successors endeavoured merely to confine it within limits compatible with the constitutional form of the civil government; or, in other words, had they bereft it of all legislative and judical authority, and made it as now, virtually erastian, or subordinate to the civil power, they would have merited praise rather than censure. From their violent and corrupt measures to overturn the Presbyterian establishment altogether, and impose episcopacy and ceremonies abhorrent to the people, and more pernicious to good civil polity, they and their advisers must be considered amenable for all the direful effects of such impolitic and tyrannical proceedings.—It may appear inconceivable how the aristocracy should have beheld with indifference the encroachments of the church; but it ought to be remembered that their own security to her patrimony, of which she had been plundered, rested strongly upon the continuance of the system; and that they were likewise, in some measure, overborne by the popular torrent. Had the clergy been installed in the old livings, they would have had a potent opposition to encounter; and it is probable that the popular favour would have been lost by the habits which large incomes generally produce. Indeed, the Presbyterian system contained a principle of self-correction, which, had matters been left to their natural course, would, in no long

time, have abridged the clerical authority. The religion so zealously introduced by the Stuarts was calculated to subdue the temper, by its hold over the imagination: But the other, destitute of all superstitious observances, and depending on popularity, appealed to the judgment and the heart, while the institution of lay elderships taught the people at large to exercise their own understandings on spiritual points. They were chiefly solicitous for purity of doctrine, and as they only supported the clergy in their pretensions for the attainment of that object, they would soon have judged the harassing interference of the ecclesiastical body with their domestic affairs, and their rigorous proceedings, by the principles promulgated from the pulpit, and applied to the throne for protection against such evils. It was from this view, doubtless, that James was advised to permit the clergy to proceed in their own way, as they would soon become so intolerable, that the people would drive them out of the country; and the history of the Scottish Church, and character of the rigid Presbyterians, prove its correctness.

With intentions corresponding to the political sentiments expressed in the Basilicon Doron, did James, while he was professing the sincerest attachment to its present form, proceed to new-model the church, expecting to undermine it by a gradual and insidious process. The clergy had frequently complained that the ecclesiastical estate was either not represented at all, or represented by laicks, and other unqualified persons who had

no authority to vote in its behalf; and a plan seems to have been entertained of sending deputies to parliament, appointed by the General Assembly *. But the most sharp-sighted and purest of the ministry who foresaw the consequences of elevating their brethren to that station, proposed that the deputies should be laymen, and annually chosen †. This did not quadrate with the king's views; and, therefore, by dextrous manœuvring, and gross corruption ‡, he obtained the consent of an assembly to the following plan: That six ministers should be nominated by the assembly for every vacant bishopric, out of which number the king should either appoint one, or, if the whole were disagreeable to him, immediately call for a fresh nomination, from whom one should be imperatively chosen. But they were to submit their public conduct to the judgment of every assembly, in which they could have no voice unless elected by the presbytery. They might likewise be deposed by the king and assembly §.

It has been argued that the opposition this measure encountered, arose entirely from an extraordinary self-denial, and rigid attachment to their own system, which made the clergy equally overlook

* Calderwood, p. 268, 412.

† Calderwood, p. 418—430, he tells us that the vote was carried in the assembly by a small majority. Mr. Gilbert Bodie, a "drunken Orkney ass, led the ring,—the rest of the north followed,—all for the body, with small regard to the spirit." See p. 429, *et seq.*

‡ Calderwood, p. 401, 403, 410, 414.

§ Spottiswoode, p. 449, 452, 456. This author tells us that this arrangement was intended by the King to be merely temporary, till the public feeling was prepared to submit to greater innovation.

hopes of preferment, and the dignity it was calculated to confer upon the whole order *. But this view bespeaks little insight into the springs of human actions, as well as very limited notions of real dignity; and is equally contradicted by the after defection of so many, through the influence of bribery and preferment, and by the accounts which the staunchest of the clergy have themselves transmitted. It has been seen that the king's object was indisputably to render the church subservient to his will: The evidence is equally clear, that the opponents of the measure descried in it a plan to raise a few tools of government at the expence of the general body; and that their zeal against it was ascribed by the court party to pride and ambition. The clergy were then a powerful, and consequently, a dignified body, admitting superiority in no bishops whatever, and obtaining reverence from all classes: Even the King beheld them with fear, and shewed every token of respect †. By the establishment of episcopacy, a few favourites of court obtained distinction; the rest, under their control, met with as little respect from the higher ranks as from their superiors in the church. The poor curate derives small dignity from the honours and emoluments of the

* Robertson has taken this ground; and Wight, in his treatise on elections, has servilely followed him in it. See Calderwood, p. 441.

† The reader would perceive, that in his general address to the whole states, including the church, the king gives the precedence to the clergy, and other office-bearers of the kirk.

Archbishop of Canterbury. In opposing the introduction of episcopacy, therefore, the clergy advocated their own interest, and studied the means of supporting their station in the community*. Nor did they conceal their sentiments; the wisest and purest of the body thus expressed themselves regarding this act of Assembly: "That it would break the bars of all their caveats, and without doubt establish *lordship*" (in the bishops appointed according to the plan) "*over their brethren*, time strengthening opinion, and custom confirming conceit†:"—"That all caveats would not prevent the bishops *from keeping pre-eminence and lordship over their brethren*:—for that they would be so esteemed and saluted amongst the rest of the Lords in Court and Parliament, and their manners being framed thereto, they would look sour if they wanted the same names in the kirk and amongst the brethren, otherwise contemn them, and endeavour the overthrow of the plat‡." The in-

* Calderwood, p. 431. If the reader will consult this author in the page referred to, he will perceive that the clergy were a politic and penetrating generation.

† Archbishop Cranmer, in a letter to Lord Cromwell, shortly after England had thrown off the papal yoke, containing a vindication of himself for using the style of *Totius Angliæ Primas*, and his so soon visiting Winton diocese; against the complaints of Stephen Gardner, Bishop of Winton—justly observes, "I doubt not butt all the Bushopps of England would gladly have had the Archbushopp's both authoritie and title taken awaye, that they mighte have byn equell together, which well appeareth by the many contencions against the Archbushopps for jurisdiction in the Court of Rome." Scott's Somers' Tracts, Vol. I. p. 49.

‡ Calderwood, p. 431-3, 4.

sidious intention of the measure they likened to the art of Sinon, in persuading the Trojans to introduce the wooden horse into the city; and one exclaimed, "Busk, busk, busk him as bonily as ye can, and bring him in as fairly as ye will, we see him well enough, we see the horns of his mitre *." Indeed, what the hypocrisy of James was calculated to conceal, his literary vanity had divulged. Seven copies only of the Basi-

* J. Melville's Memoirs, MS. p. 326, *et seq.* By the way, Andrew Melville's Latin poetry has been admired; but the Specimens of English poetry by Mr. James are execrably bad. He has one, following up the simile of Sinon.——N. B. *Busk* signifies to dress. Calderwood, p. 415. See also 449, 457, and 461-7. N. B. There was at this time a fearful eclipse of the sun. By the way, the miracles of that period were manifold. The following is a passage from Spottiswoode, regarding the miracles in 1556, which accompanied the dawning of the Reformation, and took place nine years before his own birth. Besides a comet, according to custom—"great rivers in the midst of winter dried up, and in summer swelled so high, as divers villages were therewith drowned, and numbers of cattle feeding in the valley-grounds carried to the sea: Whales of a huge greatness were cast out into sundry parts of the river Forth, hailstones of the bigness of a dove's egg falling on many parts, destroyed abundance of corns, and which was most terrible, a fiery dragon was seen to fly low upon the earth, vomiting forth fire, both in the day and night season, which lasted a long time, and put people to a necessity of watching their houses and corn-yards." P. 94. Is it not most strange that an author expecting to be believed, and who had taken up the pen to defend Episcopacy against the Presbyterian party, and had consequently numerous bitter enemies, should have disgraced his pages with such a statement? Is it not still stranger, that the party writers, however disposed to charge each other with falsehood in other respects, should, as if by mutual convention, permit such absurdities to pass without observation? They dealt not so with the Roman Catholics, whose miracles were exposed, because they were calculated to support the system attacked.

licon Doron were printed, and these cautiously circulated amongst a select number of individuals, whose secrecy was depended on; but it is a trite remark, that a secret can never be safe with a number of men; and therefore, in spite of all precautions, one of the ministry saw the work, and communicated some of the principal passages regarding the church to his brethren *. Had any doubt remained in their minds as to the motives of the King, this must have removed them; and the most vehement protestations by him to the contrary could only serve to rouse resentment at his treachery. His meanness on this occasion tended to the same purpose: Knowing that none *durst* exhibit the book itself, so as to justify the minister who had made the disclosure, he issued a warrant for his apprehension, and would probably have inflicted the punishment of falsehood or leasing-making, upon an honourable individual, had he not escaped persecution by flight †.

* J. Melville's Mem. MS. p. 331, *et seq.* Calderwood, p. 428.

† How then could Mr. Hume err so widely as to give the following note? "James ventured to say in his Basilicon Doron, *published while he was in Scotland*, 'I protest before God, and since I am here as upon my testament, it is no place for me to lie in, that ye shall never find with any border or highland thieves greater ingratitude, and more vile lies and perjuries, than with these same fanatic spirits: and suffer not the principal of them to brook the land.'"—Now, though it be true that this passage is to be found in the Bas. Dor. and that it was printed while James was in Scotland,—it was not published, nor durst he have done so. See Calderwood, an author, by the way, whom Mr. Hume does not appear to have consulted, though the most faithful historian of the Scotch church. P. 428, 435. At this very time the King declared, with many protestations, that he

Having gained so important a point, James watched the opportunity of introducing greater changes, and his accession to the English throne enabled him to execute his schemes with an infinitely higher hand *. His fury was soon directed against the most eminent independent members of the church. Some he banished, some he confined, others he deposed †. Having struck terror by his proceedings, he endeavoured to gain the rest of the body by corruption. Preferments and hopes of preferment seduced some; bribes, by money sent from England, won others. The defection of many enabled him to adopt plans either insidious or arbitrary for silencing the remainder. Bishops were appointed constant moderators of presbyteries, synods, and assemblies, in order to prevent the rights of the Presbyterian church from being

did not wish the Anglican kind of bishops. Calderwood, p. 418. Yet that he had fully intended it, his great apologist Spottiswoode assures us. P. 453. Though the work entitled Basilicon Doron was not *published*, Spottiswoode has the effrontery to allege that it greatly conciliated the affections of the English, and paved the way to the King's succession. P. 456.

* Besides direct power, his influence, arising from two sources—his power to reward, and the insecurity of church property enjoyed by the nobles,—was very great. We have, in the publication of Letters by Lord Hailes, a striking proof of the abject baseness of the court adherents. Lord Fleming, in a letter to the King, expresses his zealous desire to follow his master in all matters, either of church or state, declaring that different conduct was inexcusable in a subject. Letter 2d.

† Calderwood, 498, 549, 564. We shall comprehend this likewise in other quotations immediately.

even the subject of discussion*: and (in 1609) two courts of High Commission, afterwards united, were constituted by the mere will of the Prince †. Under the cognizance of this tribunal fell all acts and words importing a dislike to the estate of bishops—adulteries, fornications, and in short, most offences against morals or society. The judges, chiefly ecclesiastics, and all tools of government, were empowered to depose ministers, and to inflict punishment upon the subjects in general, by arbitrary fines and imprisonment; and even by the terrible sentence of excommunication, which, it was specially provided for by a statute passed this very year, should be accompanied with, as one of its consequences, extrusion of the excommunicated from their lands, rooms, and possessions‡. "This commission," says Calderwood, truly, "put the King in possession of that which he had long time hunted for, to wit—of absolute power, to use the bodies and goods of his subjects at pleasure, without form or process of the common law§." In this way was episcopacy established, and to ensure success to the King's views, and power to the bishops, temporal offices of the highest description were heaped upon them ‖. Yet, after they had

* Calderwood, 550-1, 558, 562-4, 570-2-8, 588-9. Spottiswood, p. 500, *et seq.*

† Calderwood, p. 580-4.

‡ P. 615-18, 620, 621.

§ Calderwood, p. 619. For proofs of the treachery and ambition of bishops, see 602.

‖ See p. 612, 615, 621.

become Lords in Parliament, Council, Exchequer, Session, lords of temporal lands and regalities, patrons of benefices, Moderators of the General Assembly, and Commissioners in the Court of High Commission—and were consequently great and terrible to the ministry and other professors of religion, who had already experienced the iniquity of the times in the exile or imprisonment of their leaders, the king and his coadjutors still feared a general assembly *. As, however, the subversion of li- 1609.
berty is most surely accomplished through the medium of popular forms, an assembly,—or rather a meeting under that name,—was judged necessary for perfecting the designs of the court. But a free election they durst not trust: The very time of meeting was studiously concealed, select individuals were summoned by the special order of the king, without even the appearance of public choice†. An assembly so composed, and influenced after all by the corrupt acts of bribery, promises, threats ‡,

* Calderwood, p. 621. † Calderwood, p. 621, 622.

‡ Calder. p. 624. It was said that presbytery was a word the king could not hear with patience. P. 625, 630. The king calls himself God's lieutenant, and declares his intention of acting without the church if they did do the thing themselves. P. 631, 632, 639. In p. 640, 641, the temper of both parties may be seen. Mr. D. Spence, at the synod of St. Andrew's, observed, "that a neutral is not fit to live in a commonwealth, let be in the kirk of God." The sentiment is just. He is unworthy of the protection of civil society, who, when its rights are at stake, declines to share the danger: on the other hand, there is such a thing as moderation, which, in the struggle of parties, is apt to be forgotten; and it is well remarked by Swift, that many of the most virtuous men have died in obscurity, or perished on a scaffold, because they held the golden mean.

was easily induced to give its sanction to the preconceived conclusions of the court; and these were immediately enforced by a terrible proclamation,—forbidding the subject, of whatever degree, to impugn them either in public or private, and commanding magistrates to imprison such as should infringe the injunction till the lords of the council determined their punishment. Nay, private individuals were ordered, under the penalty of being themselves adjudged guilty, to inform against those who, in their hearing, transgressed the command. "An evil deed," observes Calderwood, with much truth, "hath need to be well backed *."

Having, by such crooked policy and arbitrary proceedings, established Episcopacy upon the ruins of the Presbyterian polity, the next object of James was to substitute the rites and ceremonies of England,—abhorred by the people, for the simplicity of the ancient worship. For this purpose he visited his native country in 1617, and, though he had sufficient prudence to abstain from changes, recommended earnestly by Laud, who accompanied him, which he perceived would probably kindle the flame of rebellion throughout the kingdom †; he proceeded far enough to disgust the people without satisfying himself. The Scotch bishops, who, like renegadoes in general, were eager, upon any terms, to purchase the favour of their new master, as a recompense for conscious treachery, and the consequent abhorrence of their

* Calderwood, p. 639.

† Hacket's Life of Williams, Part i. p. 64.

old friends, and to revenge upon the latter the feelings of which they knew themselves to be worthy objects, had flattered the king with the prospect of an easy compliance in the people *. But symptoms of disgust so strong soon broke out †,—many of the nobility, trembling for the church property they had acquired, joined the opposition ‡,—as damped his hopes, displeased him at the bishops, whom he called dolts and deceivers ||, and led him to resist, and be offended at the urgent advice of Laud to introduce the rites by force §. In the imperious tone, however, with which he executed part of his plan, and the humour with which he relinquished the rest, may be traced ample proof of an arbitrary disposition ¶. Some of the ministry, amongst others Calderwood the historian, had met to protest to parliament

* Calderwood has preserved a letter of Bishop Gladstones, which is in the true strain of a bishop suddenly exalted, and of a renegado. He says, "all men follow us and hunt for our favour." P. 645. The king declared that his motive for coming to Scotland was a Solomon-like affection to see his native and ancient kingdom, and earnest desire to perform some parts of his kingly office, &c. P. 673.

† The people were offended with the decoration of Holyrood-house with images, &c. Calderwood, p. 673.

‡ Calderwood, p. 675.

|| Calderwood, p. 685.

§ Hacket's Life of Williams, Part I. p. 64.

Yet it must be observed, that in regard to the decking out of the chapel at Holyrood-house with images, James lost all patience with the bishops for dissuading him from the measure. See a letter of reproof from him to the Archbishop of St. Andrew's, the Bishops of Aberdeen, Brechin, and Galloway, and certain ministers of Edinburgh on that subject. Letters published by Lord Hailes, p. 79.

¶ Calderwood, p. 679, 681, 684, 685, 686.

against an act which was secretly prepared to declare that, whatever should be determined by the king in regard to rites, with the advice of the prelates, and a competent number of the clergy, by which might be meant any number, should receive the force and operation of a law. The two who had subscribed this protest, and Calderwood who had drawn it, were summoned before the high commission, where James himself presided, and poured out insulting language that would have degraded the meanest judge; and, after the mockery of a trial, the two who subscribed that protest were punished with deprivation and imprisonment, and Calderwood himself with exile *.

Five Articles of Perth.

The object of the king at this time was chiefly accomplished by five articles, afterwards known by the name of the five Articles of Perth, from having been ratified by a packed and overawed assembly there; and which were to this purpose: I. The first commanded communicants to receive the sacrament kneeling. II. The second enjoined or permitted the administration of the Lord's Supper privately

* Calderwood says that the king at first intended to have sent him to Virginia, p. 685, 686. The king's indecent conduct to Calderwood, p. 681, 682.

The impudence of the bishops was extreme. Spottiswoode the historian, then Archbishop of St. Andrew's, in a sermon at this time, railed against Andrew Melville as an innovator and so forth. "So impudent and shameless was the man," says Calderwood, "who in former times durst scarce open his mouth in his presence. He inveighed bitterly against many worthy men of the ministry, who were then resting from their labours, and said some of them were profane men and deserved to be hanged." P. 689. See farther p. 691.

to the sick. III. The third allowed the baptism of children to be performed privately, and commanded that the priest should admonish the people never to defer it longer than the next Sunday after the birth. IV. The fourth commanded that children of eight years old should be catechised and blessed by the minister, or, in other words, confirmed. V. The fifth ordered the observance of certain festivals commemorating the descent of the Spirit, the birth, passion, resurrection, and ascension of Christ.—Though, as the only way to insure obedience in the people, it was necessary to have these articles sanctioned by the form of an assembly, the means used to influence it were some of them of the coarsest kind *. The expediency of yielding was enforced by the threat of incurring the wrath of authority—imprisonment, deprivation, exile—utter subversion of the estate and order of the church; and, to discourage opposition, it was plainly intimated that neither reasoning nor numbers should prevail †. But the vote of such an assembly could not satisfy the people, and, therefore, severity was resorted to for the purpose of subduing their stubborn spirit ‡. The act of

* Calderwood, p. 697, in proof of the method of proceeding. See also p. 675, 676, 677.

† Calderwood, p. 714.

‡ Calderwood, p. 732, 736, 749. See the spirit of the people manifested in 734, 753—755. In the Old Kirk, the chief communicants in the new fashion were the lords of session. In the College Kirk, out of 1600 communicants only about 20 knelt, and the chief were poor people taken out of the hospital, who durst not refuse. But some of the kneelers "knocked on their breast, and lifted up their hands and eyes." P. 753. At Easter communion, 1621, (p. 759.)

1621. this meeting was likewise afterwards ratified by parliament, to give it additional authority over the public mind *. The clergy tried to avert such a legislative enactment; but their supplications were intercepted, the chief petitioners imprisoned, and all the clergy, except the ministers of the town, banished for a season from Edinburgh †.

At this distance of time, when the various notions which have been broached and maintained regarding the institutions of Christianity, have ceased to agitate the human mind, it requires an effort to conceive, or sympathize with, the feelings of our ancestors on the subjects embraced by the five Articles of Perth. But it ought never to be forgotten that these topics then produced the most violent and tragical effects throughout Europe; and a little reflection will satisfy us that scenes of a similar kind would probably be again exhibited on such an improper and arbitrary interference of the prince.

there were few communicants, and many sat—the women all did so; and one being urged to kneel, answered, "I will either receive it sitting, or not at all." See p. 754, for a proof of severity, also p. 811.

* P. 767, *et seq.* The power of the bishops was craftily enlarged, and the checks upon them omitted.

Calderwood, pp. 759, 783. Indications of God's wrath at these innovations, were inferred from the appearances of the heavens, p. 783.

The king urged the bishops to carry on the work, now that the Articles were ratified by parliament; and attempted to terrify the people by threatening to remove the Courts of Justice. "But a great number was resolved to stand out against conformity, howbeit the king should burn the town to ashes." P. 784, 786, 811, 812.

The ministers of Edinburgh were detested by the people, for their ambition, avarice, and malice at honest men and godly professors.

† Spottiswoode, p. 542. Calderwood's MS. Vol. viii. p. 981, *et seq.* Printed Hist. p. 764, *et seq.*

The first Article is the most material, and we shall therefore dwell on it more particularly. All sects of Christians, with the exception of Quakers, are agreed upon the vital importance to their faith, of the Lord's Supper; but their views of the institution have been various, and maintained with that keenness which the darkness and magnitude of the subject are calculated to inspire. With the famous disputes about transubstantiation, consubstantiation, and the like, all men of enlightened understandings must be acquainted, and we shall not pretend to explain the grounds of difference *. These were testified by the mode of administering the sacrament; and the Scottish church had valued herself exceedingly on the purity with which this institution had been observed by her; the communicants sitting, according to the supposed manner of the original supper, and dealing the elements from right to left—typical of their familiarity with Christ their head †. Even James himself had been

* To such as desire a general acquaintance with ecclesiastical history, and the various opinions which have been broached, I recommend Mosheim's Church History.—Tillotson justly calls transubstantiation "the grand burning article" of the church of Rome. See his Sermons "On Transubstantiation."

† Knox's Hist. b. 4. In 1560, petitions were presented to Parliament in favour of the Reformation, and amongst the topics complained of, "transubstantiation, the adoration of Christ's body under the form of bread," was the first. Spot. p. 150. In the Form of Church Policy, it is said that it is only properly administered when it appears nighest unto the action of Christ. The defrauding the laity of the cup a damnable error. Spot. p. 152-3. "In time of blindness," it was said, "the holy sacrament was gazed upon, *kneeled* unto, carried in procession, and worshipped as Christ himself." First Book of Discip-

forward, as we have seen, to denounce the English service as an evil said mass, and in this very article, which enforces kneeling, it is said, "That our kirk hath used, since the reformation of religion, to celebrate the holy communion to the people sitting, by reason of the great abuse of kneeling, used in the idolatrous worship of the sacraments of papists." Now, gloss over the article in whatever terms, one of two things is indisputable—either that the act of kneeling was significant of something importing "the adoration of Christ's body in the form of bread," or that it was not. If the first, the question immediately is, do the communicants believe in the thing signified? Let us suppose, which in this instance was the fact, that they do not, it is perfectly obvious, that, instead of all sincerity, the essence of religion, the individual who approaches the table, professing by gestures what he denies the truth of, is acting the hypocrite, and, to please an earthly sovereign, disgracing the cause of his Master. To a zealous man, under such circumstances, the terrible denunciation of the Apostle, "He who eateth this bread, and drinketh this cup unworthily," &c. must immediately occur. Take now the other view, which was the one adopted by the wily bishops to serve the present turn, "that nothing was altered in substance, but only in ritual matters;" the answer is best conceived in the words of the opposing mini-

line. Spot. p. 170. See p. 181. Cald. p. 25, 40. See Treatise denominated Perth Assembly, where the articles proposed there are fully discussed.

sters, "that all which belonged to the institution consisted in rites *." If a ceremony be necessary at all, it ought undoubtedly to be administered according to the communicant's idea of it, otherwise it ceases to be that by which he is to testify his creed, and fulfil the command. Besides, the abhorrence of the mass had, in Scotland, been extended by association to the act of kneeling, in so much that genuflexions were thenceforth discontinued in addressing the Deity. Much of the same reasoning applies to the other articles; but indeed it would be trifling with the reader's patience to argue this farther. Nothing can be unimportant in religion, and the less intrinsically important these articles were, the more culpable was the monarch in disgusting a whole people by their introduction. Had he acted from bigotry, there would have been an excuse for the man, though not for the sovereign; but the people's resistance would have been excusable, nay, praiseworthy, on the same principles, and more so on the higher ground—that they were not like slaves, tremblingly to place the chief magistrate in the papal chair, and change their very religion in obedience to his absolute command. But the religion of James was subservient to his politics, even by his own statement; innovations were made to subdue every notion of liberty, and these were only an earnest of what he intended †.

* Calderwood, p. 724-5, 734.

† As, self-complacency is the basis of happiness, the human mind labours to justify its bad actions to itself by a certain modulation of its opinions, and therefore it may be alleged that James ultimately deceiv-

The assembly which ratified the Articles was the last held this reign; and though James had prudence enough to abstain from farther innovations when he perceived the violent effects produced by these, he, with the strangest inconsistency, proceeded to obtrude them, and afterwards even something more*, by persecution, upon an indignant people, when his death gave that king-

ed himself, by resentment, into a belief of the importance of the articles which he arbitrarily imposed. But, as in all his speeches, his grand objection to the Catholic doctrine was its king-killing, and king-deposing principles, and to the Presbyterians, the democratical tendency of theirs; as his conversation is said to have been dissolute and abominably profane, Coke, p. 151, I conclude that he was himself the god of his own idolatry. R. Coke is called by Mr. Hume a passionate writer; but in this respect his accuracy is established beyond all doubt by Buckingham's Letters to James, published by Lord Hailes. See p. 80. A favourite who could descend to the most abject flattery, (see p. 177.) would not here have dared to write with shameless profanity, unless it had been agreeable to his master.—Why impute to him greater sincerity than to the clergy who so basely deserted their principles? James Melville observed that the church could only be safe with assemblies and presbyteries; "for," says he, "who shall take order therewith? The court and bishops? as well as Martine Elliot and Will of Kinmouth, with stealing on the borders." Cald. p. 168. By the way, those who peruse the whole of J. Melville's letter on this subject, will scarcely think him entitled to the character of mild, which was attributed to him. See Spottiswoode, p. 534. James says, either "we and this church must be held idolatrous in this point of kneeling, or they reputed rebellious knaves for refusing the same." Yet he was so far from persecuting the Catholics, that he hazarded a rupture with the English Parliament, and practised the grossest hypocrisy in suspending the laws against them. Nay, he entertained a great partiality for that church, though he disclaimed it publicly. But catholicism is favourable to arbitrary government and the divine right of kings. See the pretensions to a divine right by this monarch in his Bas. Dor. New Law of Free Monarchies, Speeches, and Spot. p. 537.

* Cald. p. 800.

dom a short respite by devolving the odious task upon his son *.

Government of Scotland.

The governments of Scotland and England bore a striking analogy in some respects, but in others they differed materially. The commons of England had, in the thirteenth century, begun to form a distinct branch of the legislature; but in Scotland, though representatives of burghs were early admitted, no commissioners for shires appear to have attended till the year 1587. By the theory of the Scotch, and, as it is generally believed, of the English constitution likewise, all tenants of the crown, or barons, as they were denominated, were entitled to sit in parliament; but many, from the smallness of their livings, and the overwhelming influence of the great aristocracy, had forborne to attend an assembly where they were merely objects of disdain. Their presence, however, being accounted useful to the sovereign—as it was no less their interest than his to curb the excessive power of the nobles, and their consequent abuse of it—a statute was procured by James I. in 1425, enjoining their attendance. But the impracticability of the attempt led to its abandonment, and oc-

* Cald. p. 786, 811, 812. Calderwood tells us there was a great tempest, with an extraordinary tide, and direful effects, the day King Charles was proclaimed, and another at the funeral of James, p. 815 and 816. "Upon the Lord's day following," (the death of James) "the ministers of Edinburgh commended King J
the most religious and peaceable prince that ever was in the world. Mr. John Adamson said, King David had more faults than he had; for he committed both adultery and murder, whereof King James was not guilty."

casioned the statute 1427, allowing the barons in the various shires to chuse commissioners, or deputies, annually, to represent their body in the national assembly, and reserving power to the monarch to summon the nobles by precept *. This statute, it will be observed, was nearly two centuries posterior to the representation of the commons in the sister kingdom; nor was that the only ground of difference. In England, the right of voting was not confined to mere tenants of the crown, but was indisputably exercised by all freeholders; and one ingenious man of the greatest acuteness has even maintained that it was enjoyed *by freemen in general*, previous to the stat. Henry VI. limiting it to freeholders of 40s. annual rent †. But in Scotland, late as the measure was of being introduced, it was restricted to proprietors who held of the crown; and yet, such had been the state of property and manufactures, that the arrangement entirely failed ‡. The burghs had early acquired a

* See Scots Acts. Mr. Miller thinks that this throws much light upon the origin of the English representation, because James I. was educated in England: but I am of a different opinion; for the right of suffrage would have been equally extensive, had the king copied the English model. See Millar, Vol. II. p. 208, 209.

† See Bentham on Reform, Introd. p. 72, *et seq.* note.

‡ "At the first we were all one house," said the celebrated Mr. afterwards Sir Edward Coke, in the year 1592 or 1593, at the time speaker of the commons, "and sat together, by precedent which I have of a parliament holden before the conquest, by Edward, the son of Etheldred; for there were parliaments before the conquest, that appeareth in a book which a grave member of this house delivered unto me, which is entitled Modus tenendi Parliamentum, &c.; and this book declareth how we all sat together; but the commons sitting

right of representation, and their commissioners sometimes attended—the commissioners for counties never. The lesser barons, perceiving that laws framed to shelter them from the tyranny of the greater, were devoid of vigour, could have no alacrity in enacting them. Besides, as all the estates sat in one chamber, though it appears to have been intended by the act to divide them, the commissioners were treated with supercilious contempt by the haughty nobles, and therefore shunned the situation. But a practice which had been introduced for the dispatch of business in Scotland, became latterly of vast importance as an ingredient of the constitution. The parliament had early devised the plan of selecting a committee to prepare the bills, or articles, which were to form the subjects of discussion by the house: But, in process of time, an idea began to prevail, that no bill, or article, could be submitted to the legislature except by this organ; which threw an immense weight into the monarchical scale, since, in order to crush any bill in embryo, it was merely necessary to secure a majority of the committee, or lords of articles; and the method of chusing that body promised the means of success. For it appears that, in the year 1560, the spiritual lords elected the temporal who were to be on the arti-

in presence of the king, and among the nobles, disliked it, and found fault that they had not free liberty to speak. And upon this reason, that they might speak more freely, being out of the royal sight of the king, and not amongst the great lords, so far their betters, the house was divided, and came to sit asunder." D'Ewes, p. 515.

cles, and the temporal the spiritual*. Now, as the spiritual became entirely dependent on the prince, the members from their body were likely to be well affected to him, and that estate would take especial care to pitch upon similarly disposed individuals from amongst the peers. The burgesses chose their own. At that period the gain to the sovereign would be small, as any thing deemed by the aristocracy subversive of their rights, would be disregarded; but afterwards matters were entirely altered.

The Scotch real representation of barons owed its origin to the statute of James VI. 1587. c. 114. which enjoined the sending of deputies or commissioners from the respective shires, but restricted the right of suffrage to free tenants of the crown possessed of 40s. annual rent, and actually residing within the county. This statute indeed only confirmed with a limitation the preceding one of James I. which had become a dead letter; and its object was to afford the prince a counterpoise to the nobility. That it arose from no benevolent motive, is evident from a plan devised by this monarch soon afterwards, to render parliaments organs of his will, the passing of which can only be accounted for from the supineness or

* We learn from Spottiswoode, pp. 149, 150, that, in chusing the Lords of the Articles, Jan. 1560, the Romish prelates complained bitterly that the members of the church that were chosen were either apostates or laics; but, says the author, "the course was changed, and it behoved them to take law who had formerly given it to others." See Wight on Elections, p. 90. See Henry's Hist. vol. xii. p. 177.

even security of the aristocracy, produced by excessive power, or from improper dealing with the record *. By Stat. 1594. c. 222 †, under the pretext of relieving parliament of perilous or impertinent matters, (a specious pretext is never wanting,) it was provided that whenever a parliament was proclaimed, there should be a convention, composed of four individuals from each estate, appointed to meet twenty days before the parliament, for the purpose of receiving all articles regarding either general laws or particular parties, which however were, in the first instance, to be presented to the clerk register, and by him delivered to the convention, who again were to prepare them for the Lords of the Articles. Now it is singular that no provision was made for the election of this previous meeting, so that it devolved necessarily upon the crown—a circumstance which exceedingly heightens our astonishment at the statute. For, in this way, no bill obnoxious to the court, could ever even reach the Lords of Articles, since it had to pass through first an individual officer of the crown; and, secondly, a committee of its nomination. But,

* Scots Acts. Spottiswoode says some of the nobles opposed the act. P. 365.

† All men of intelligence in Scotch affairs know that President Forbes was the first who put a stop to the iniquitous practice pursued by his predecessors, of altering the judgments of the Supreme Court after they were pronounced. The judgments were, previous to the time of Forbes, written out in the President's Chamber; but he procured an alteration of this practice by a provision to have them subscribed openly in presence of the whole court.

though this law was permitted to disgrace the statute book, the grossness of its tendency was too apparent to be reduced to practice * (something of the kind, however, was resorted to in 1621) till 1633, when Charles (a fact that seems entirely to have escaped historians and writers on this subject) used it as an engine for the accomplishment of his arbitrary designs †. After the accession to the English throne, when the sovereign had gained an immense increase of power, a new device less glaring, though equally efficacious, was resorted to ‡. The bishops, mere tools of government, having been created against the wishes of the people, nominated, as formerly,

* Yet both in 1613 and in 1617, James nominated the Lords of Articles. See the case of Balfour of Burley in Hailes's Coll. for the first, and Spottiswoode, p. 531, for the second. The author tells us, with apparent condemnation of the Parliament, that in the choice of the Lords of Articles, the persons nominated by the king were passed by as suspected, and they were for refusing the admission of any crown officers but the Chancellor, Treasurer, and Clerk of the Rolls; but they were all ultimately admitted.

In 1621, a proclamation was issued, ordaining all petitions to be presented, within a limited time, to the Clerk Register, that they might be examined by a certain number of the Council before the meeting of Parliament, as from the shortness of time allowed to Parliament, the Lords of Articles could not thoroughly sift them. Calderwood's MS. Hist. Adv. Lib. vol. viii. p. 978. The inference is clear, and accordingly the Presbyterian clergy were told by the Clerk Register, that he doubted whether he could receive their supplication. Ib. p. 998.

† It is very remarkable, that this fact escaped not only Hailes, but Laing and others, yet it rests on the best authority, Balfour's Annals, MS. Advocates' Lib. Vol. ii. p. 67. *et seq.*

‡ Those who look into the case of Balfour of Burley in Hailes's Letters, p. 40, *et seq.* will see what influence was used in the election of the Lords of Articles after James's accession to the English throne.

eight noblemen for the articles, the nobles eight bishops; and these sixteen again nominated eight barons or commissioners of shires, and eight burgesses, a plan which put the nomination altogether in the hands of the bishops, and by consequence in those of the crown. With even this, however, James was unsatisfied; and therefore, as if to prevent the possibility of failure, the principal officers of state were added to the number, and while no article from the subjects could obtain a hearing without the consent of the committee, a special proviso was made, by the act 1594, in favour of the sovereign, empowering him to present articles directly at any period. By this device, a law obnoxious to parliament might be rejected; a popular one, disagreeable to the king, could not even be the subject of discussion *.

* See late publication of Scots Acts, for a list of Lords of the Articles at the beginning of each Parliament. Officers of state were first added in 1606. The number varied from six to eight; and the general number from each of the States was eight. The act of James VI. anno 1587, enjoined not fewer than six, and not more than ten.——N. B. There was no act allowing the Officers of state to be put upon the Articles, till 1st of C. II. which confirmed the previous practice. See Spottiswoode, p. 488. 490.—The arbitrary conduct of James may be traced in every act of government. The Lord Balfour of Burley had shewn some stiffness in the choice of the Lords of Articles, and he was subjected to persecution. Commissioners, forsooth, were appointed to inquire into his conduct, &c. See Letters published by Lord Hailes, p. 40, 41.

Lord Hailes infers, that the bishops were not all in the interest of the crown, because a court list of such as were thought fit to pass upon the articles, and were therefore to be elected, was deemed necessary. But is there no difference in talent, dexterity in intrigue, and want of scrupulosity in every point, amongst the adherents of a prince?

State of society.

After the union of the crowns, society underwent a material change. The inveterate feuds of the nobility were suppressed, associations for mutual security or offence prohibited, and the power of the prince exalted above the aristocracy. Salutary as this change on a slight inspection may appear, it could not fail to be productive of misery to the people, in a somewhat similar way to the great change of manners in England. Manufactures had been long imported for staples; but, as the power and distinction of the aristocracy arose more from the number of their followers than the costliness of their living, the quantity was trifling. Upon the suppression of feuds, however, numerous dependents became of less consequence; revenue, from many causes, of infinitely more. The neighbourhood of England, and the intercourse with France affected Scotch manners; but the removal of the court to the sister kingdom attracting the gay, who returned with splendour to their native country, rapidly promoted a spirit of imitation. And as courtiers, to support their credit with the English nobility, endeavoured to derive a larger revenue from their estates, which could only be accomplished by the dismission of a numerous petty tenantry for such as could embark in larger undertakings *, their example must have been to a certain degree quickly followed. But the free importation of manufactures, preventing

* It would not be difficult to shew, however, that extensive tracts were, at a much earlier period, let on lease.

the growth of them in a country destitute alike of capital and skill, and exposed to so many discouragements from an oppressive government, a potent aristocracy, hereditary jurisdictions, and the evil dispensation of justice in even the supreme courts *, to which few could obtain access; the great body of the people were without almost every kind of subsistence. A part, indeed, found a resource in emigration, which is reported to have been great; yet the general misery was indescribable. In the accounts transmitted by Cromwell's army, in 1650, then in the richest district of Scotland, we meet a loathsome picture of wretchedness: "That the countrymen were so enslaved to their lords, that they could not get any thing considerable of their own before-hand; and many of their women were so sluttish, that they did not wash their linen above once a-month, nor their hands and faces above once a-year †." This account, though probably exaggerated, must have been deeply founded in truth; and if it be only considered that filth, in a people, is the most infallible test of penury and misery,

* The extreme corruption of Justice may be concluded from a letter from Alexander Fraser, Bishop of Aberdeen, to King James, after his accession to England, requesting his majesty to write to the president of the Court of Session "to be his friend in all his lawful acts"—suits of law. See Letters, &c. published by Lord Hailes, p. 80, in a note.

Whoever will take the trouble to look into Hailes's publication of Letters, p. 1, *et seq.* will see the most revolting picture of public justice. Judges were influenced by promises and threats—a jury packed, &c. all to convict Welsh, a Presbyterian minister. James himself was most keen in the business.

† Whitelocke's Memorials, p. 468. There were, however, even then, some large lease-holders.

since they who are bereft of other comforts generally want the spirit to embrace that of cleanliness, which is within their reach—their condition may be conceived *.

The effect of religion.

A gloomy austerity has been imputed to the early Scotch presbyterians, and it has been ascribed to their religious tenets, which inculcated that all mankind are naturally in a state of reprobation, and a few only selected for grace through the merits and benign intercession of the Saviour †. But were this conclusion just, we should still witness the same effects, not in Scotland only, but throughout the reformed church, where similar principles, somewhat modified, prevail at this day. Nothing, however, is more fallacious than a sweeping deduction from a people's faith. So dark a veil envelopes futurity, so vague is the picture of it formed by the most vivid fancy, so insensibly is one's creed modelled by the temper of his mind, and the ordinary affairs of life—that the votary's natural alacrity of spirit surmounts his faith, and either disposes him to forget it, or buoys him up with the assurance of being numbered with the

* See Fletcher's Works. To remove the misery of the people, he proposes to introduce domestic slavery.

In Moryson's Travels, Part III. p. 155, published in 1617, the reader will find some account of Scotch manners.

† Laing's Hist. B. I. p. 24. I suspect that this gentleman has drawn his opinion from the austerity of the covenanters afterwards; forgetting that *persecution* had almost driven them to madness. "The coldest bodies warm with opposition, the hardest sparkle in collision." Junius' Letter to the King.

elect. Every unprejudiced eye must perceive that general imputations of gloominess ascribed by the established church to dissenters, and even by one part of the established church to the other, are destitute of foundation; and it is evident that any inference from the exterior of a very limited sect would be distant from the truth. For the few who expose themselves to the charge of singularity by particular tenets, are either men of melancholy habits, or of ardent minds, whose feelings, unsympathized with by the rest of mankind, prey on themselves; or such as are ambitious of distinction, or of credit, by the shew of superior sanctity. Not to religion, therefore, unless to persecution for it, but to the wretchedness in which the bulk of the people were immersed, is any particular austerity to be imputed. Their religious persuasion, by ever keeping present to their minds that, however despised and trampled on in this world, they were no less, but rather more, the favourites of heaven, than their overbearing masters, must have preserved the inborn dignity of man, and by affording a subject for exalted reflection, prevented them from becoming absolutely embruted by their miserable condition*.

* See Spottiswoode as to the early anxiety of the reformers for schools, p. 160. In the First Book of Discipline, it was determined that there should be a school in every parish, Spottiswoode, p. 160. All the chief representations of the clergy about the church livings contain a demand for schools. Very soon after the accession to the English throne, it was resolved that schools should only be taught by such as the bishops approved of. Calderwood, p. 477.

State of the Highlands.] Hitherto our attention has been occupied chiefly with the most civilized part of Scotland; we shall now direct it to the Highlands, the Isles, and the Borders. The Highlands were inhabited by a race little removed from barbarism, who, though they acknowledged a nominal subjection to the throne, despised its laws. Their language bore no analogy to that elsewhere in use, and their manners and dress were equally peculiar. The whole were divided into clans, each of which, under the dominion of a chief, or chieftain, formed a species of principality that maintained with its neighbours the relations of war and peace. The members of a clan were distinguished by one common patronymic, and boasted of an original descent from the same family of which their chief or chieftain was the representative *. Nor, from the nature of things, could the boast be destitute of foundation. For as the chief or chieftain's right of property in the land possessed by the clan was universally acknowledged, it was natural for him to provide in a particular manner, in proportion to the degree, for those who stood within the generally acknowledged degrees of propinquity to himself; and it was his interest to encourage them to marry—to which, indeed, a comparative liberal provision would of itself sufficiently dispose

* Leslie de Moribus Scotorum. The Highland garb seems to have been the same, or nearly so, as the Irish, which is afterwards described by us.

them—that he might be furnished with a trusty family band, ready to check any defection in his other followers. But the territory being fully peopled, he could only provide for his immediate connections at the expense of other vassals, whose removal to an inferior station must again have supplanted those who had occupied it. Hence there would always be an overflow, from the higher ranks pressing upon and wasting away the lower, till, in process of time, they might all with safety boast of a common descent. From the state of property, the power of the chief or chieftain was absolute. His numerous family connections, who were interested in supporting his authority, secured him against a general revolt; and as every clan was necessarily encumbered with surplus population, and chiefs had neither the means, nor would be inclined to harbour refugees, lest they should encourage mutiny in their own followers by an example of success, individuals had no alternative but submission or death, which might be inflicted at the discretion of the chief or chieftain. But as his rank and power were liable to no dispute, and the boasted origin of his followers in arms reflected glory on himself, by a numerous and gallant kindred at his beck—he permitted a certain species of familiarity, which, while it was incapable of misconstruction, sweetened their bondage, and increased their attachment. Like all savages, though averse to labour, they delighted in the fatigues and dangers of war, or of predatory excursions; and as they shared the booty, or were

benefited by any additional territory, into the surrender of which a neighbour had been harassed, and again suffered with their lord all the calamities of invasion, they were inflamed with the same feelings and devoted by passion to his service *.

Isles. The inhabitants of the isles were still more savage than their neighbours on the mountains †;

* The story we shall give relating to the Isles will prove this. But, indeed, when one party frequently burnt, destroyed, and murdered indiscriminately, all must have felt. Spottiswoode, p. 390.

† The following account, from Spottiswoode, p. 348, of a feud in 1586, presents a horrid picture. M'Koneil and M'Lain, two of the principal men, were connected by marriage; M'Koneil having married the other's sister. M'Lain having been educated on the Continent, had learnt some civility and good manners, which procured him the respect of his neighbours, and the envy and rancorous hatred of M'Koneil, who, after many petty quarrels, laid a snare for his life. He proposed a visit to M'Lain, and that the latter should accompany him to his own country. M'Lain cheerfully received him, but declined to give an answer about accompanying him.

M'Koneil visited him, and remained four or five days with every token of amity, and then entreated the other's company home, saying, *that he would leave his eldest son and a brother-german pledges for his safety.* Overcome with importunity, M'Lain consented, but declined the pledges, lest he should seem to distrust him; he took with him, however, forty-five of his kindred and servants. When they arrived at Kintyre, they were welcomed with liberal feasting, according to that people's custom. But at night, after they had retired to rest in a separate house, M'Koneil beset the house, and called forth the other to drink. To this he replied, that they had already drunk too much, and that it was now time to rest. But it is my will, said the other, that you rise and come forth. M'Lain began to suspect treachery. He, however, dressed himself with his men, and opened the door, when, perceiving a company in arms, and M'Koneil with his sword drawn, he asked what the matter was, and if he intended to break faith? "No faith," said the other. "I gave none, and must now have an account of you and your friends for the wrongs I have received." M'Lain had taken his nephew, a little child, to bed with him, and being put to defence, kept

and James, who seems to have considered his subjects as peculiarly his property as the live stock in his parks, and who was anxious for the improvement of part of the territory over which he had been appointed chief magistrate, proposed extermination as the only means of introducing refinement, and therefore made gifts of the territory to certain individuals, with power to execute his purpose. But the project ended in the discomfiture of the invaders.

Prior to the union of the crowns, the borders were in a pastoral state; the inhabitants a species of freebooters, of depraved habits, ever prepared to make incursions into the sister kingdom, and not unfrequently disposed to plunder their own countrymen, by whom they were beheld with dis- Borders.

the child on his left shoulder, by way of a targe. The child cried to his uncle for mercy, and M'Koneil, moved at the sight of his own child in such peril, promised to spare M'Lain's life, provided he would surrender his weapons, and become a prisoner. The other was fain to comply, and was conducted under a guard to another house. His followers, with the exception of two, whom M'Koneil refused to spare, surrendered on similar terms. The two defended themselves so dexterously, that the house was obliged to be fired; and they were consumed in it. Notwithstanding the promise, however, the rest were all beheaded next day in M'Lain's sight; and an accident—the falling of M'Koneil from his horse and breaking his leg—was the only cause for prolonging M'Lain's life. The king, hearing of this, sent a herald with orders to deliver M'Lain; but still he was detained, and only got his liberty on the most humiliating terms. This he no sooner acquired, than, in defiance of the treaty—notwithstanding all the civility he had learned on the Continent—he fell upon M'Koneil's bounds, burning, and killing man, woman, and child. See further as to the state of the isles, Spot. p. 278. 390. 411. 415, 416. 519.—King James's Works.

may *. Their habits calculated them for promptitude in resisting an enemy; and, as their flocks and herds could easily be removed to a distance, invasion failed to spread the terror, or to inflict the calamities, which it occasions to a well cultivated district. The people of the respective countries had been much harassed by the licentiousness of the borderers, and the harmony between the kingdoms often interrupted—as, therefore, the pretexts for their military habits were, on the union, removed, the king used his power to curb their lawless lives, and, in a short time, the fields began to be cultivated and the manners to change †.

* "In the month of Julie," (anno 1530,) "the king went with ane armie of 8000 men to Easdale," (Eskdale,) "to apprehend and punish thieves."—"John Armstrong, a notable thief, who had compelled the English to pay black mail, and was terrible in those parts to the Lord Maxwell himself" (the warden, I believe,) "*when he was coming to the king*, enticed by some courtiers, bot without a safe conduct, he was intercepted by fifty horsemen lying in ane ambush, and brought to the king as if he had been apprehendit by them against his will, he and a great number of his companie were hanged." Calderw. Mons. vol. i. p. 80. See Buch. Hist. l. xlii. c. 39. Calderwood has done little more than translate from Buchanan.

Johnston, p. 55. for some account of the Borderers, Nicolson's Border Laws. Spottiswoode, 272. 305, 306. 402. 413, 414. 434. 448. Leslie.

† On the accession James assumed the title of king of Great Britain, and ordered all the fortresses on the borders to be demolished. Spot. p. 486.

## CHAP. V.

*State of Ireland.*

THOUGH Ireland was all nominally subjected to the English throne so early as the time of Henry II., it was only by the great exertions of Elizabeth towards the close of her reign, that James was, in the beginning of his, enabled to establish the authority of the crown in every quarter of that island.

At the first invasion by the English, the Irish approximated to the lowest stage of barbarism, and the measures of the invaders, far from being calculated to diffuse civilization, obstructed improvement, and, if possible, reduced the inhabitants to still greater mental degradation. They were divided into small septs; and powerful English adventurers having obtained from the crown grants of extensive tracts for the purpose of colonization, drove a divided people before them, and occupied the soil. The septs that were thus expelled from their habitations in vain sought an asylum in the more inaccessible parts of the country, since hostile septs, to which they were as invaders, opposed their inroads. The new settlements were, therefore, in a great measure attend-

ed with extermination, and, in process of time, the natives every where perceived, that, unless they expelled, or at least kept down the English settlers, they should be dispossessed of the soil. Large seigniories, which were granted from time to time to great English favourites, augmented the hostility. These could not have been taken advantage of without a general extermination of the natives, which was impracticable; but enough was done to annoy them and spread universal terror. At some periods the great lords in the English settlements, wishing to render themselves independent of the crown, began to form alliances with the natives; but the intercourse, instead of civilizing them, led to a degeneration of the settlers. To prevent this degeneracy and falling off from their allegiance, tyrannical laws prohibited intercourse under the pains of treason, and, consequently, augmented the bitter hatred of the aboriginal inhabitants, who thus perceived themselves treated as if not entitled to the privileges of humanity. The settlers and the natives were, therefore, in continual hostility of the most rancorous description. Colonies were, in various quarters, from time to time attempted, but the chief settlement was of the pale, which comprised the counties of Dublin, Meath, Lowth, Kildare, &c.

The natives, in the meantime, retained their own laws and usages, with the various relations of peace and war, within their different septs. Murder was, as in all barbarous countries, punishable only by fine; but the state of property evinced

that manners had not nearly arrived at that stage when the easy remission of such a crime begins to form an exception to the general usages *. The chiefs of the different septs were elective; but, as was to have been expected, it was generally the most powerful relation of the preceding one who obtained the rule. The territory occupied by the sept was conceived to belong to the whole as a body; but the distribution was left to the chief, who, on his election, made a general partition: even on the death of any individual, he made a new arrangement, by throwing the lands occupied by him into the general mass. It may well be presumed that, in every arrangement, he would take especial care of those for whose assistance he was mainly solicitous. From such uncertainty of possession there could be no agricultural improvement. Temporary huts were alone erected; and so little was grain relied upon, that, says Moryson, "the wild Irish, in time of greatest peace, impute covetousness and base birth to him that hath any corn after Christmas; as if it were a point of nobility to consume all within those festival days †." Oats were the only species of grain raised; and these, instead of being thrashed, were burned from the straw ‡—though the cows, on which they chiefly depended for subsistence, re-

* Consider the civilization in Homer's time, when a mulct was taken for a murdered relation, and compare it with the savage state of Ireland.

† Description of Ireland, appended to his history, p. 375.

‡ Id. p. 371.

quired the fodder. They seldom fed upon animal food; but at times they devoured whatever died, or came in their way, without distinction. Like savages in general, their gluttony was unrestrained while the food lasted; but then they submitted to privation for a length of time. Their cows, from which their chief subsistence was drawn, they grazed on the mountains during the summer months, themselves inhabiting wretched hovels or boolies; while they carried the herds in the evening to some neighbouring bawn for safety. Their dress corresponded with their general rudeness. It consisted of a large shirt, in which, by the multiplicity of folds, they frequently contrived to include about thirty-six ells, and which they dyed in saffron as a preventive to vermin, and as superseding the necessity of washing, a species of cleanliness not accordant with their habits: over the shirt was thrown a large mantle, which not unfrequently served as a tent when they lay on watch to commit depredations, concealed the booty they had stolen, and served sometimes even in place of a target against the swords of their enemies. A large bunch of hair, called the glib, descended from the forehead, but, though useful in shielding them from the inclemency of the weather, it was prohibited by the English, as so concealing the features that thieves could not be identified. To cement a union amongst the members of the septs, the children of the chiefs and their immediate followers were given out to be nurtured by the inferior people. The affection that sprang from this

source was astonishing: the famous Spenser tells us, that once, when he was present at Limerick at the execution of a notable traitor, Murrogh O'Brien, he saw an old woman, his foster mother, take up the head and suck the blood, saying that the earth was not worthy to drink it, and then steep her face and breast in the streams which flowed from his other quarters, while she tore her hair and shrieked most terribly. There was, however, a species of intercourse maintained between the higher and lower classes, which must have been less agreeable to the latter: the former took up their habitation with the other, and resided with them so long as they had any thing to consume. Nor could the great men feel any privation or inconvenience in residing with the meaner people, since their own houses were wretched erections of clay, or boughs of trees covered with turf. They seem to have distilled very little spirits amongst themselves; but so addicted were they to intemperance, when they could procure the means, that even the lords and ladies drank promiscuously to the most brutal stage of intoxication. The English-Irish did not escape the infection of this vice. The Irish had amongst them many bards, whose effusions were, according to Spenser, surely the most capable of judging, not destitute of poetical beauty; but, suited to the manners of the barbarians to whom they were addressed, they incited to lawless deeds*. This descrip-

* He says that a young man of rank found bards and rythmers to praise him and give him encouragement to lawless deeds, for "little reward,

tion is not, however, applicable to the whole native race. The chiefs in various quarters applied, from time to time, for charters from the crown, and began to adopt a different system.

As the leading septs were ever ready to throw off the semblance of the English yoke, and recover their possessions, frequent attempts were made by the English monarchs to reduce them; but the troops, living at free quarters, only spoiled the country, and it was, as formerly stated, Elizabeth who, after having been long harassed by their petty insurrections, and deeply provoked by the rebellion of Tyrone,—in the thirty-ninth of her

or a share of a stolne cow; then waxeth he most insolent and halfe madde with the love of himself, and his owne lewd deeds. And, as for words to set forth such lewdness, it is not hard for them to give a goodly and painted shew thereunto, borrowed even from the praises which are proper to vertue itselfe. As of a most notorious thiefe and wicked outlaw," (query? might not such a one have pleaded against the English, *in foro conscientiæ*, that he was trying to recover part of what his countrymen had been robbed?) "which had lived all his lifetime of spoyles and robberies, one of their bards in his praise will say, that he was none of the idle milke-sops that was brought up by the fire-side, but that most of his days he spent in armes and valiant enterprises; that he did never eat his meat before he had won it with the sword; that he lay not all night sluggin in a cabbin under his mantle, but used commonly to keepe others waking to defend their lives, and did light his candle at the flames of their houses, to leade him in the darkenesse: That the day was his night, and the night his day; that he loved not to be long woing of wenches to yeeld to him, but tooke by force the spoyle of other men's love, and left but lamentation to their lovers; that his musick was not the harpe, nor layes of love, but the cryes of people, and the clashing of armour: and finally, that he died not bewayled of many, but made many waile when he died, that dearly bought his death." View of Ireland, p. 52, 53. edit. Dublin, 1633. See the estimation in which the bards were held: none durst displease them through fear of being rendered infamous, p. 51.

reign, sent an army capable of accomplishing the purpose. New evils then awaited the natives: nearly six hundred thousand acres of land, in the counties of Limerick, Kerry, Tipperary, Waterford, and Munster, were, as forfeited, disposed of among English undertakers: half a million were likewise disposed of in the counties of Donegal, Tyrone, Derry, Fermanagh, Cavan, and Armagh, besides immense tracts in other quarters, as not occupied on proper titles; while such a rigorous inquisition into the titles of lands was every where instituted, every flaw being taken advantage of, that no man could be assured of his possession. Regulations were devised under James for the improvement of the country, but however judicious in regard to the new settlers, they were fraught with misery to the former natives. The chiefs of septs were not the proprietors of the soil; but merely intrusted with the occasional partition of it amongst the inhabitants, as a subject in which all had an interest. From time to time, however, these chiefs obtained grants of the soil, as if they had been the proprietors; and, now obliged to submit to the English regulations and customs, they brought the great body of the people into dependence as tenants at will, and not unfrequently manifested what was deemed a spirit of improvement, by driving these miserable beings from their habitations, to perish on the mountains, that they might let the lands to English settlers. In a short time, however, the appearance of the country underwent a wonderful change, and manifested externally

tranquillity and improvement. The natives had, generally speaking, till that period, been treated by the invaders as worse than aliens. The intercourse that now ensued, though it apparently softened the mutual animosity, could not reconcile men who saw foreigners in possession of their soil, and perceived by how precarious a tenure they retained what had not yet been wrested from them.

Religion confirmed the mutual animosity. The late invaders were generally protestants of the stricter kind. The natives, though too unenlightened to comprehend the principles of any creed, were zealously attached to the Romish priesthood, who, repining at seeing their livings occupied by others, had no difficulty in teaching their flocks that their oppressors were rebels to heaven. The English-Irish were also catholics of the fiercest description; and both on this ground, and through jealousy of the later settlers,—who, arriving with more polished manners, were too much inclined to transfer their contempt of the mere Irish to the race that had so long been settled there,—they encouraged the Romish clergy, and augmented the differences by a temporary coalition with the natives.

There had been parliaments occasionally called in Ireland, from the time of Edward II., but the lords who were summoned were chiefly of the English-Irish, and very limited in number: the few English shires alone sent deputies. When, however, the whole island was subdued, it was

throughout divided into shires, and members not only allowed from the respective counties, but from various towns. But the powers of the parliament were extremely limited. Perceiving the aptitude of the English, who were the legislators, to devise laws oppressive to the natives, and injurious to the English crown, Sir John Poynings, in the reign of Henry VII. introduced a bill, which was passed, and called, from his name, Poynings' law, prohibiting any bill from being introduced into the Irish parliament till it had obtained the previous approbation of the king and his council; and the statute was still rigidly enforced: Whatever might be the expediency of the law, at the period of its enactment, it, in process of time, became an engine of state against the liberties of the people *.

* See Derick, in Scott's Somers' Tracts, enriched with some curious notes. Spenser's Account of Ireland. Moryson's, and also his Travels. Davies' Discoverie, a work in which we find few traces of the elegance imputed to it by Mr. Hume. But there were two reasons for his eulogium; one, that he had very little acquaintance with the literature of the period; the other, that he had an attachment to the author, from his impudent defence of the most arbitrary proceedings of his master, James, whose favour he purchased by a prostitution of his talents. See Temple's History of the Rebellion, Carte's Life of Ormonde, vol. i. p. 10, *et seq.* And here I would recommend to the reader to peruse, p. 27, *et seq.* for an instance of tyrannous cruelty sanctioned by James, almost unparalleled.

# NOTES TO VOLUME FIRST.

## Note A.

*The following are Quotations from Fortescue's Work, entitled* De Laudibus Legum Angliæ, *with the Translations for the Benefit of the English Reader.*

### CAP. IX.

Secundum verò, *Princeps*, quod tu formidas, consimili nec majori operâ elidetur. Dubitas nempe, an Anglorum Legum, vel Civilium Studia Te conferas, dum Civiles supra humanas cunctas Leges alias, Fama per Orbem extollat gloriosa. Non te conturbet, *Fili Regis*, hæc Mentis Evagatio: Nam non potest *Rex Angliæ* ad Libitum suum Leges mutare Regni sui, Principatu namque nedum Regali, sed et Politico, ipse suo Populo dominatur. Si regali tantùm ipse præesset eis, Leges Regni sui mutare ille posset, *Tallagia* quoque et cætera Onera eis imponere ipsis inconsultis, quale Dominium, denotant Leges Civiles, cum dicant, "*Quod Principi placuit Legis habet vigorem.*" Sed longé aliter potest Rex politicé imperans Genti suæ, quia nec Leges ipse sine Subditorum Assensu mutare poterit, nec Subjectum Populum renitentem onerare Impositionibus peregrinis, quare Populus ejus liberé fruetur Bonis suis, Legibus quas cupit Regulatus, nec per Regem suum, aut quemvis alium depilatur; consimiliter tamen plaudit Populus, sub Rege Regaliter tantum principante, dummodo ipse in Tyrannidem non labatur. De quali Rege dicit Philosophus III. Politicorum, "*Quod melius est Civitatem regi Viro optimo, quàm Lege optimâ.*" Sed quia non semper contingit Præsidentem Populo hujusmodi esse virum, *Sanctus Thomas* in Libro

quem Regi Cypri scripsit, *de Regimine Principum*, optare consetur, Regnum sic institui, ut Rex non liberé valeat Populum Tyrannide gubernare, quod solum fit, dum potestas Regia Lege Politicâ cohibetur: Gaude igitur, *Princeps optime*, talem esse Legem Regni in quo Tu successurus es, quia et Tibi, et Populo, ipsa Securitatem præstabit non minimam et solamen. Tali Lege, ut dicit idem *Sanctus*, regulatum fuisset totum Genus humanum, si in Paradiso Dei Mandatum non præteriisset: tali etiam Lege regebatur Synagoga, dum sub solo Deo Rege, qui eam in Regnum peculiare adoptabat; illa militabat: sed demum ejus Petitione, Rege Homine sibi constituto, sub Lege tantum Regali ipsa deinceps humiliata est. Sub quâ tamen dum optimi Reges sibi præfuerunt, ipsa plausit, et dum Discoli ei præessebant, ipsa inconsolabiliter lugebat, ut Regum Liber hæc distinctius manifestavit. Tamen quia de Materiâ istâ in Opusculo, quod Tui contemplatione de *Naturâ Legis Naturæ* exaravi, sufficienter puto me desceptasse, plus inde loqui jam desisto.

TRANSLATION.

The next thing, my Prince, at which you seem to hesitate, shall, with the same ease, be removed and answered; that is, whether you ought to apply yourself to the study of the *laws of England*, or to that of the *civil laws*; for that the opinion is with them every where in preference to all other human laws. Let not this difficulty, Sir, give you any concern. A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only *regal* but *political*. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose *Tallages* and other hardships upon the people whether they would or no, without their consent; which sort of government the civil laws point out, when they declare, *Quod Principi placuit legis habet vigorem*: But it is much otherwise with a king whose government is *political*, because he can neither make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them against their wills with *strange impositions*, so that a people governed by such laws as are made by their own consent and approbation, enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other: The same things may be effected under an *absolute prince*, provided he do not degenerate into the *tyrant*. Of such a prince Aristotle, in the 3d of his *Politics*, says, "It is better for a city to be governed by a good man, than by good laws." But

because it does not always happen that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the king of Cyprus, (De Regimine Principum,) wishes that a kingdom could be so instituted, as that the king might not be at liberty to tyrannize over his people; which only comes to pass in the present case; that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good Prince, that such is the law of that kingdom which you are to inherit, because it will afford both to yourself and subjects the greatest security and satisfaction. With such a law, saith the same St. Thomas, all mankind would have been governed, if in Paradise they had not transgressed the command of God. With the same was the whole nation of the Jews governed under the *Théocracy*, when God was their king, who adopted them for his peculiar people. Till at length, upon their own request, having obtained another sort of king, they soon found reason to repent them of their foolish and rash choice, and were sufficiently humbled under a *despotic* government: But when they had good kings, as some there were, the people prospered, and lived at ease; but when they were otherwise, their condition was both wretched and without redress. Of this you may see a particular account in the Book of the Kings. This subject being sufficiently discussed in a small piece I formerly drew up on purpose for your use, concerning the Law of Nature: So I shall forbear at present to enlarge.

## CAP. XVIII.

Statuta tunc Anglorum bona sint necne, solùm restat explorandum. Non enim emanant illa a principis solùm voluntate, ut leges in Regnis quæ tantùm Regaliter gubernantur, ubi quandoque Statuta, ita Constituentis procurant commodum singulare, quod in ejus subditorum ipsa redundant Dispendium et Jacturam: Quandoque etiam Inadvertentia Principum hujusmodi, et sibi consulentium, inertia, ipsa tam inconsultè eduntur, quod corruptelarum nomina, potiùs quàm legum, illa mereantur. Sed non sic Angliæ statuta oriri possunt, dum *nedum Principis voluntate, sed et totius regni assensu*, ipsa condantur, quòd populi Læsuram illa efficere nequeunt, vel non eorum commodum procurare. Prudentiâ etiam et sapientiâ necessariò ipsa esse referta putandum est, dum non unius, aut centum solùm, consultorum virorum prudentiâ, sed plusquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipsa edita sunt, ut ii, qui Parliamenti Anglici Formam, Convocationis quoque ejus ordinem

et modum noverunt, hæc distinctius referre nôrunt. Et si statuta hæc tantâ solemnitate et prudentiâ edita, efficaciæ tantæ, quantæ conditorum cupiebat intentio, non esse contingant, concitò reformari ipsa possunt: et non sine communitatis et procerum Regni illius assensu, quali ipsa primitùs emanarunt. Patent igitur jam tibi, Princeps, legum Anglorum species omnes. Earum quoque qualitates, ut si bonæ ipsæ sint, metiri tu poteris prudentiâ tuâ, comparatione etiam aliarum legum, et cum nullam tantæ præstantiæ in orbe reperies, eas nedum bonas, sed tibi optabilissimas, fore, necessariò confiteberis.

TRANSLATION.

It only remains to be inquired, whether the *statute law* of England be good or not. And as to that, it does not flow solely from the mere will of one man, as the laws do in those countries which are governed in a despotic manner; where sometimes the nature of the constitution so much regards the single convenience of the legislator, whereby there accrues a great disadvantage and disparagement to the subject. Sometimes also, through the inadvertency of the prince, his inactivity and love of ease, such laws are unadvisedly made as may better deserve to be called corruptions than laws. But the statutes of England are produced in quite another manner: Not enacted by the sole will of the prince, but with the concurrent consent of the whole kingdom by their representatives in parliament. So that it is morally impossible but that they are and must be calculated for the good of the people: and they must needs be full of wisdom and prudence, since they are the result not of one man's wisdom only, or an hundred, but such an assembly as the Roman senate was of old, more than three hundred select persons; as those who are conversant in the forms and method of summoning them to parliament, can more distinctly inform you. And if any bills passed into a law, enacted with so much solemnity and foresight, should happen not to answer the intention of the legislators, they can be immediately amended and repealed, in the whole or in part, that is, with the same consent, and in the same manner, as they were at first enacted into a law. I have thus laid before you, my Prince, every species of the laws of England. You will of yourself easily apprehend their nature, whether they be good or not, by comparing them with other laws: And when you will find none to stand in competition with them, you must acknowledge them to be not only good laws, but such, in all respects, as you yourself could not wish them to be better.

## CAP. XXII.

Non igitur contenta est lex *Franciæ* in criminalibus, ubi mora imminet rem testibus convincere, ne falsidicorum testimonio sanguis innocens condemnetur. Sed mavult lex illa reos tales *torturis* cruciari, quousque ipsi eorum reatum confiteantur, quàm testium depositione, qui sæpe passionibus iniquis, et quandoque subornatione malorum, ad perjuria stimulantur. Quali cautione et astutiâ, criminosi etiam et de criminibus suspecti tot torturarum in regno illo generibus affliguntur, quòd fastidit calamus ea literis designare.—The author continues in a strain of the utmost abhorrence against such a practice, and depicts the revolting lengths to which it was carried in France. He is the more vehement, probably from an attempt which had been made in that reign (H. VI.) to introduce the rack into England—an instance of which, with the detestable consequences, he alludes to. In Ch. 25-33, he gives a full account of the trial by jury, and its beneficial consequences; while he shews that, from the want of a middle rank in France, it could not be practised there.

### TRANSLATION.

For this reason the laws of France, in capital cases, do not think it enough to convict the accused by evidence, lest the innocent should thereby be condemned; but they choose rather to put the accused themselves to the rack, till they confess their guilt, than rely entirely on the deposition of witnesses, who, very often from unreasonable prejudice and passion, sometimes at the instigation of wicked men, are suborned, and so become guilty of perjury. By which over cautious and inhuman stretch of policy, the suspected, as well as the really guilty, are, in that kingdom, tortured in so many ways, as is too tedious and bad for description.——

## CAP. XXXIII.

*Princeps*—Video, inquit et eas inter totius orbis jura (in casu, quo tu jam sudasti) præfulgere considero, tamen progenitorum meorum Angliæ Regum quosdam audivimus, in legibus suis minimè delectatos, *satagentes proinde Leges civiles ad Angliæ Regimen inducere*, et patrias leges repudiare fuisse conatos: horum roverâ consilium vehementer admiror.

TRANSLATION.

Prince, I am convinced that the laws of England eminently excel beyond the laws of all other countries in the case you have been now endeavouring to explain; and yet I have heard that some of my ancestors, kings of England, have been so far from being pleased with those laws, that they have been industrious to introduce and make the civil laws a part of the constitution, in prejudice of the common law: this makes me wonder what they could intend or be at by such behaviour.

## CAP. XXXV.

Reminiscere, princeps divine, qualiter villas et oppida Regni Franciæ frugum opulentissima, dum ibidem peregrinabaris, conspexisti, regis terræ illius hominibus ad arma et eorum equis ita onusta, ut vix in eorum aliquibus quam magnis oppidis tu hospitari valebas; ubi ab incolis didicisti, homines illos, licet in villa una per mensem aut duos perhendinaverint, nihil prorsus pro suis aut equorum suorum expensis solvisse, aut solvere velle; sed, quod pejus est, aretabant incolas villarum et oppidorum, in quæ descenderant, sibi de vinis, carnibus, et aliis, quibus indigebant, etiam carioribus necessariis quàm ibi reperiebantur, a circumvicinis villatis, suis propriis sumptibus providere. Et si qui sic facere renuebant, concitò fustibus cæsi properé hoc agere compellebantur; ac demum consumptis in villâ unâ victualibus, focalibus, et equorum præbendis, ad villam aliam homines illi properabant, eam consimiliter devastando, nec denarium unum pro aliquibus necessariis suis, etiam aut concubinarum suarum, quas in magnâ copiâ secum semper vehebant, vel pro sotularibus, caligis, et aliis hujusmodi, usque ad minimam earum ligulam solverunt, sed singulas suas qualescunque expensas habitatores villarum, ubi moras fecerunt, solvere coegerunt. Sicque et factum est in omnibus villis et oppidis non muratis totius regionis illius, ut non sit ibi villula una expers de calamitate istâ, quæ non semel aut bis in anno, hac nephanda pressura depiletur. Præterea non patitur Rex quenquam Regni sui salem edere, quem non emat ab ipso Rege, pretio, ejus solum arbitrio, assesso. Et si insulsum pauper quivis mavult edere, quam salem excessivo pretio comparato, mox compellitur ille, tantum de sale Regis ad ejus pretium emere, quantum congruet tot personis quot ipse in domo suâ fovet. Insuper omnes Regni illius incolæ dant, omni anno, Regi suo *quartam partem omnium vinorum*

quæ sibi accrescunt; et omnis caupo quartum denarium pretii vinorum, quæ ipse vendit; et ultra hæc, omnes villæ et burgi solvunt Regi annuatim ingentes summas super eos assessas pro stipendiis hominum ad arma; sic quòd armata regis, quæ quàm magna semper est, pascatur annuatim de stipendiis eis, per pauperes villarum, burgorum et civitatum regni. Et ultra hæc, quælibet villa semper sustinet sagittarios duos ad minus, et aliquæ plures in omni apparatu, et abilimentis sufficientibus ad serviendum regi in guerris suis, quoties sibi libet eos summonere, quod et crebrò facit; ac iis non ponderatis maxima *Tallagia* alia sunt omni anno assessa ad opus regis, super quamlibet villam ejusdem regni, de quibus non uno anno ipsi alleviantur. Hiis et nonnullis aliis calamitatibus plebs illa lacessita in miseriâ non minimâ vivit, aquam quotidie bibit, nec alium, nisi in solemnibus festis, plebeii gustant liquorem. Froccis sive callobitis de canabo ad modum panni saccorum teguntur. Panno de lanâ, præterquam de vilissima, et hoc solùm in tunicis suis subtus Froccas illas, non utuntur, neque caligis nisi ad genua discooperto residuo tibiarum. Mulieres eorum nudipedes sunt, exceptis diebus festis; carnes non comedunt, mares aut fœminæ ibidem præter lardum baconis, quo impinguant pulmentaria sua in minimâ quantitate. Carnes assatas coctasve alias ipsi non gustant, præterquam interdum de intestinis et capitibus animalium pro nobilibus et mercatoribus occisorum. Sed gentes ad arma comedunt alitilia sua, ita ut vix ova eorum ipsis relinquantur, pro summis vescenda deliciis. Et si quid in opibus eis aliquando accreverit, quo locuples eorum aliquis reputetur concitò ipse ad regis subsidium plus vicinis suis ceteris oneratur, quo extunc convicinis ceteris ipse equabitur paupertate. Hæc ni fallor, forma est statûs gentis plebanæ regionis illius, nobiles tamen non sic exactionibus opprimuntur. Sed si eorum aliquis calumniatus fuerit de crimine, licèt per inimicos suos, non semper coram judice ordinario ipse convocari solet: sed quàm sæpe in regis camerâ, et alibi in privato loco, quandoque verò solùm per internuncios, ipse inde alloqui visus est, et mox ut criminosum cum principis conscientia, relatu aliorum judicaverit, in sacco positus, absque figura judicii, per præpositi Mariscallorum ministros noctanter in flumine projectus *submergitur*, qualiter et nuper audivisti majorem multo numerum hominum, quàm qui legitimo processu juris convicti extiterunt. Sed tamen, quod principi placuit (juxta leges civiles) legis habet vigorem. Etiam et alia *enormia* hiis similia, ac quædam hiis deteriora, dum in Francià, et prope regnum illud conversatus es, audisti, non alio, quàm legis illius, colore, detestabiliter, damnabiliterque perpetrata, quæ hic inserere, nostrum nimium dialogum protelaret. Quare,

quid effectus legis politicæ et regalis, quam quidam progenitorum tuorum pro lege hac civili commutare nisi sunt, operatus est in regno Angliæ, a modo visitemus, ut utrâque legum experientiâ doctus, quæ earum tibi eligibilior sit, ex earum effectibus elicere valeas, cum (ut suprà memoratur) dicat philosophus, quòd, "*Opposita, juxta se posita, magis apparent.*"

TRANSLATION.

You may remember, most worthy Prince, in what a condition you observed the villages and towns of France to be, during the time you sojourned there. Though they were well supplied with all the fruits of the earth, yet they were so much oppressed by the king's troops, and their horses, that you could scarce be accommodated in your travels, not even in the great towns. Where, as you were informed by the inhabitants, the soldiers, though quartered in the same village a month or two, yet they neither did nor would pay any thing for themselves or horses; and, what is still worse, the inhabitants of the villages and towns where they came, were forced to provide for them *gratis*, wines, flesh, and whatever else they had occasion for; and if they did not like what they found, the inhabitants were obliged to supply them with better from the neighbouring villages. Upon any non-compliance, the soldiers treated them at such a barbarous rate, that they were quickly necessitated to gratify them. When provisions, fuel, and horse-meat, fell short in one village, they marched away full speed to the next, wasting it in like manner. They usurp and claim the same privilege and custom not to pay a penny for necessaries, either for themselves or women, (whom they always carry with them in great numbers,) such as shoes, stockings, and other wearing apparel, even to the smallest trifle of a lace or point; all the inhabitants, wherever the soldiers quarter, are liable to this cruel oppressive treatment: It is the same throughout all the villages and towns in the kingdom which are not walled. There is not any, the least village, but what is exposed to the calamity, and, once or twice in the year, is sure to be plundered in this vexatious manner. Further, the king of France does not permit any one to use salt but what is bought of himself, at his own arbitrary price; and, if any poor person would rather choose to eat his meat without salt, than to buy it at such an exorbitant dear rate, he is, notwithstanding, compellable to provide himself with salt, upon the terms aforesaid, proportionably to what shall be adjudged sufficient to subsist the number of persons he has in his family. Besides all this, the inhabitants of France give every year

to their king the fourth part of all their wines, the growth of that year; every vintner gives the fourth penny of what he makes of his wines by sale. And all the towns and boroughs pay to the king yearly, great sums of money, which are assessed upon them for the expenses of his men at arms. So that the king's troops, which are always considerable, are subsisted and paid yearly by those common people who live in the villages, boroughs, and cities. Another grievance is, every village constantly finds and maintains two cross-bowmen at the least; some find more, well arrayed in all their accoutrements, to serve the king in his wars, as often as he pleaseth to call them out, which is frequently done. Without any consideration had of these things, other very heavy taxes are assessed yearly upon every village within the kingdom for the king's service; neither is there ever any intermission or abatement of taxes. Exposed to these and other calamities, the peasants live in great hardship and misery. Their constant drink is water, neither do they taste throughout the year any other liquor, unless upon some extraordinary times or festival days. Their clothing consists of frocks, or little short jerkins, made of canvass, no better than common sackcloth; they do not wear any woollens except of the coarsest sort, and that only in the garment under their frocks; nor do they wear any trouse, but from the knees upwards, their legs being exposed and naked. The women go barefoot, except on holidays; they do not eat flesh, unless it be the fat of bacon, and that in very small quantities, with which they make a soup; of other sorts, either boiled or roasted, they do not so much as taste, unless it be of the inwards and offals of sheep and bullocks, and the like, which are killed for the use of the better sort of people, and the merchants; for whom also quails, partridges, hares, and the like, are reserved, upon pain of the gallies: as for their poultry, the soldiers consume them, so that scarce the eggs, slight as they are, are indulged them by way of a dainty. And if it happen that a man is observed to thrive in the world, and become rich, he is presently assessed to the king's tax proportionably more than his poorer neighbours, whereby he is soon reduced to a level with the rest. This, or I am very much mistaken, is the present state and condition of the peasantry of France. The nobility and gentry are not so much burthened with taxes; but if any one of them be impeached for a state crime, though by his known enemy, it is not usual to convene him before the ordinary judge, but he is very often examined in the king's own apartment, or some such private place; sometimes only by the king's pursuivants and messengers: as soon as the king, upon such information, shall adjudge him to be guilty, he is never more

heard of, but immediately, without any formal process, the person so accused and adjudged guilty, is put into a sack, and by night thrown into the river by the officers of the provost marshal, and there drowned: In which summary way you have heard of more put to death than by any legal process. But still, according to the civil law, "what pleases the prince has the effect of a law." Other things of a like irregular nature, or even worse, are well known to you, during your abode in France, and the adjacent countries, acted in the most detestable barbarous manner, under no colour or pretext of law than what I have already declared. To be particular would draw out our discourse into too great a length. Now it remains to consider what effect that *political mixed government*, which prevails in England has which some of your progenitors have endeavoured to abrogate, and instead thereof to introduce the civil law; that, from the consideration of both, you may certainly determine with yourself which is the more eligible, since (as is above mentioned) the philosopher says, "That opposites laid one by the other do more certainly appear;" or, as more to our present argument, "Happinesses by their contraries are best illustrated."

## CAP. XXXVI.

In regno Angliæ nullus perhendinat in alterius domo invito domino, si non in hospitiis publicis, ubi tunc pro omnibus, quæ ibidem expendit, ipse plenarie solvet, ante ejus abinde recessum; nec impune quisque bona alterius capit sine voluntate proprietarii eorundem, neque in Regno illo præpeditur aliquis sibi de sale, aut quibuscunque mercimoniis aliis ad proprium arbitrium, et de quocunque venditore, providere. Rex tamen necessaria domûs suæ, per rationabile pretium juxta constabulariorum villarum discretiones assidendum, invitis possessoribus, per officiarios suos capere potest: sed nihilominus pretium illud in manibus, vel ad diem per majores officiarios domûs suæ limitandum, solvere per leges suas obnoxius est; quia nullius subditorum suorum bona juxta leges illas ipse deripere potest sine satisfactione debitâ pro eisdem. Neque Rex ibidem, per se, aut ministros suos Tallagia subsidia aut quævis onera alia, imponit legiis suis, aut leges eorum mutat, vel novas condit, sine concessione, vel assensu totius regni sui, in parliamento suo expresso. Quare incola omnis regni illius, fructubus quos sibi parit terra sua et quos gignit pecus ejus, emoluimentis quoque omnibus, quæ industriâ propriâ vel alienâ, ipse terrâ marique lucratur, ad libitum proprium utitur, nullius præpeditus injuriâ vel rapinâ, quin ad minus inde debitas consequitur emen-

das; unde inhabitantes terram illam locupletes sunt, abundantes auro et argento, et cunctis necessariis vitæ. Aquam ipsi non bibunt, nisi quòd ob devotionis et pœnitentiæ zelum aliquando ab aliis potubus se abstinet, omni genere carnium et piscium ipsi in copiâ vescuntur, quibus patria illa non modicè est referta, Pannis de lanis bonis ipsi induuntur in omnibus operimentis suis, etiam abundant in lectisterniis, et quolibet supellectili cui lana congruit, in omnibus domibus suis, necnon opulenti ipsi sunt in omnibus hustilimentis domus, necessariis culturæ et omnibus quæ ad quietam et felicem vitam exiguntur, secundum status suos. Nec in placitum ipsi ducuntur nisi coram judicibus ordinariis, ubi illi per leges terræ juste tractantur. Nec allocuti sive implacitati sunt de nobilibus aut possessionibus suis, vel arrettati de crimini aliquo qualitercunque magno et enormi, nisi secundum leges terræ illius et coram judicibus antedictis. Et hii sunt fructus, quos parit regimen politicum et regale: Ex quibus tibi jam apparent experientiæ effectus legis, quam quidam progenitorum tuorum objicere conati sunt. Superius quoque tibi apparent effectus legis alterius, quam tanto zelo, loco legis istius, ipsi nisi sunt inducere, ut ex fructibus earum tu agnoscas eas. Et nonne ambitio, luxus et libido, quos prædicti progenitores tui regni bono præferebant, eos ad hoc commercium concitabant? Considera igitur, Princeps optime, et jam alia quæ sequentur.

TRANSLATION.

In England, no one takes up his abode in another man's house without leave of the owner first had, unless it be in public inns, and there he is obliged to discharge his reckoning, and make full satisfaction for what accommodation he has had, ere he be permitted to depart. Neither is it lawful to take away another man's goods without the consent of the proprietor, or being liable to be called to an account for it. No man is concluded, but that he may provide himself with salt, and other necessaries for his family, when, how, and where, he pleases. Indeed, the king, by his purveyors, may take for his own use necessaries for his household, in a reasonable price, to be assessed at the discretion of the constables of the place, whether the owners will or not; but the king is obliged by the laws to make present payment, or at a day to be fixed by the great officers of the king's household. The king can't despoil the subject without making ample satisfaction for the same; he can't by himself or his ministry lay taxes, subsidies, or any imposition of what kind soever upon the subject; he can't alter the laws, or make new ones, without the express consent of the whole kingdom in parliament assembled: Every inhabitant is at liberty fully to use and enjoy

whatever his farm produceth, the fruits of the earth, the increase of his flock, and the like: all the improvements he makes, whether by his own proper industry, or of those he retains in his service, are his own, to use and enjoy without the lett, interruption, or denial of any one: if he be in any ways injured or oppressed, he shall have his amends and satisfaction against the party offending: hence it is that the inhabitants are rich in gold, silver, and in all the necessaries and conveniencies of life. They drink no water, unless at certain times, upon a religious score, and by way of doing penance. They are fed, in great abundance, with all sorts of flesh and fish, of which they have plenty every where; they are clothed throughout in good woollens; their bedding and other furniture in their houses are of wool, and that in great store. They are also well provided with all other sorts of household goods and necessary implements for husbandry: every one, according to his rank, hath all things which conduce to make life easy and happy. They are not sued at law but before the ordinary judge, where they are treated with mercy and justice according to the laws of the land: neither are they impleaded in point of property, or arraigned for any capital crime, how heinous soever, but before the king's judges, and according to the laws of the land. These are the advantages consequent from that political mixed government which obtains in England. From hence it is plain what the effects of that law are in practice, which some of your ancestors, kings of England, have endeavoured to abrogate: the effects of that other law are no less apparent, which they so zealously endeavoured to introduce among us; so that you may easily distinguish them by their comparative advantages. What, then, could induce those kings to endeavour such an alteration, but only ambition, luxury, and impotent passion, which they preferred to the good of the state? You will please to consider, in the next place, my good Prince, some other matters which will follow to be treated of.

N. B.—The St. Thomas to whom the author so often alludes, was the famous Thomas Aquinas, a friar of the Dominican order, born A. D. 1224—a fact which proves that men in other countries knew even then what franchises belonged to the people.

*Extracts from Fortescue's Work in English, entitled, The difference between* Dominium Regale *and* Dominium Politicum et Regale.

## CHAP. II.

"Why one King reynith *Regaliter tantum*, and another reynith *Politice* et *Regaliter*.

"Hyt may peraventure be marvelid by some men, why one Realme is a Lordshyp only *Royall*, and the Prynce thereof rulyth yt by his law, called *Jus Regale*; and another kyngdome is a Lordschip, *Royal and Politike*, and the Prince thereof rulyth by a Lawe, callyd *Jus Politicum* and *Regale*; sythen thes two Princes beth of egall astate.

"To this dowte it may be answered in this manner: The first Institution of thes twoo Realmys, upon the Incorporation of them is the cause of this diversyte.

"Whan *Nembroth* by might, for his own Glorye, made and incorporate the first Realme, and subduyd it to himself by Tyranne, he would not have it governyd by any other Rule or Lawe, but by his own will; by which and for the accomplishment thereof he made it. And, therfor, though he had thus made a Realme, holy Scripture denyyd to cal hym a Kyng, *Quia Rex dicitur a Regendo*: Whych thyng he dyd not, but oppressyd the people by myght, and therfor he was a Tyrant, and called primus Tyrannorum. But holy writ callith hym *Robustus Venator coram Deo*. For as the Hunter takyth the wyld beste for to sele and eate hym, so *Nembroth* subduyd to him the People with might, to have their service and their goods using upon them the Lordschip that is called *Dominium Regale tantum*. After hym *Belus* that was called first a Kyng, and after hym his sone *Nynus*, and after hym other Panyms; they, by example of *Nembroth*, made them Realmys, would not have them rulyd by other Lawys than by their own wills. Which Lawys ben right good under good princes, and their Kyngdoms are then most resemblyd to the Kyngdome of God which reynith upon man, rulyng him by hys own will. Wherfor many Crystyn Princes usen the same Lawe; and therfor it is, that the Lawys sayen, *Quod Principi placuit Legis habet vigorem*. And thus I suppose first beganne in Realmys, *Dominium tantum* Regale. But afterward, when mankynd was more mansuete, and better disposyd to vertue, Grete communalties, as was the Feleship that came into this Lond with *Beute*, wyllyng to be unyed, and made a Body Politike callid a Realme, havyng an Heed to governe it; as after the

saying of the Philosopher, every Communaltie unyed of many parts must needs have an Heed: than they chose the same *Brute* to be their Heed and Kyng. And they and he upon this Incorporation and Institution, and onyng * of themself into a Realme, ordenyd the same Realme so to be rulyd and justyfyd by such lawys, as they al would assent unto, which Law therfor is called *Politicum*; and bycause it is mynystred by a kyng, it is called *Regale*. *Dominium Politicum dicitur quasi regimen, plurium scientia sive Consilio ministratum.* The Kyng of *Scotts* reynith upon his people by this Lawe, *videlicet*, *Regimine Politico et Regali*. And as *Diodorus Syculus* saith, in his Boke de priscis historijs, The Realme of Egypte is rulid by the same Lawe, and therfor the Kyng therof changeth not his Lawes, without the assent of his people. And in like forme as he saith is ruled the Kyngdome of *Saba*, in *Felici Arabia*, and the Lond of Libie: And also the more parte of al the Realmys in *Affrike*. Which manner of Rule and Lordship the said *Diodorus* in that Boke, praysith gretely. For it is not only good for the Prince, that may thereby the more sewerly do Justice, than by his own Arbitriment; but it is also good for his people that receyve thereby, such Justice as they desyer themself. Now as me semyth, it ys shewyd opinly ynough, why one Kyng rulyth and reynith on his People *Dominio tantum Regali*, and that other reynith *Dominio Politico et Regali*; For that one Kyngdome beganne, of and by, the Might of the Prince, and that other beganne, by the Desier and Institution of the People of the same Prince."

## CHAP. III.

"Hereafter be schewyd, the Frutes of *Jus Regale*, and the Frutes of *Jus Politicum et Regale*.

"And hou so be it, that the French Kyng reynith upon his people *Dominio Regali*; Yet Saynt *Lewes* sumtyme Kyng ther, ne any of his Progenytors set never Talys or other Impositions, upon the People of that Lond, without the assent of the three Astatts, which whan thay be assemblid are like to the Court of Parlement in *England*. And this order kept many of his successours until late days, that Englishmen made such a war in *Fraunce*, that the three Estats durst not come to gyders. And than for that cause, and for grete necessite which the French Kyng had of Goods, for the defence of that Lond, he took upon him to set Talys and other Impositions upon the Commons without the assent of the three Estats; but yet he would not set any such charge, nor hath set upon the Nobles, for feare of rebellion.

* Uniting

And because the Commons, though they have grutchid, have not rebelled, or be hardy to rebell, the French Kyngs have yearly sythen, sett such charge upon them, and so augmented the same chargis, as the same Commons be so impoverished and destroyyd, that they may unneth * lyve. Thay drynke water, they eate apples, with Bredd right brown made of Rye. They eate no Fleshe, but if it be selden, a litill Larde, or of the Entrails, or Heds of Bests sclayne for the Nobles and Merchaunts of the Lond. They weryn no Wollyn, but if it be a pore cote under their uttermost Garment, made of grete canvas, and cal it a frok. Their Hosyn be of like Canvas, and passen not their Knee; wherfor they be gartrid, and their Thyghs bare. Their Wifs and Children gone bare fote; they may in none otherwyse lyve. For sum of them, that was wonte to pay to his Lord for his Tenement, which he hyrith by the Yere, a Scute, payyth now to the Kyng, over that Scute, five Skuts. Wher thrugh they be artyd by necessite, so to watch, labour, and grub in the ground, for their sustenaunce, that their nature is muche wastid, and the Kynd of them brought to nowght. Thay gone crokyd, and are feble, not able to fyght, nor to defend the Realme; nor they have wepon, nor money to buy them wepon withal; but verely thay lyvyn in the most extreme Povertie and Myserye, and yet thay dwellyn, in one, the most fertile Realme of the World: wher thrugh the French Kyng hath not men of his own Realm, able to defend it, except his Nobles, which beryn non such Impositions; and therfor they are ryght likely of their Bodys, by which cause the said Kyng is compelled to make his armys, and Retennys for the defence of his land, of Straungars, as *Scotts, Spaniards, Arragonars*, Men of *Almayn*, and of other Nacions, els al his Ennymys might overrenne hym. For he hath no Diffence of his own, except his Castells and Fortrasis. Loo this the frute of his Jus Regale. Yf the Realme of *England*, which is an Ile, and therefor may not lightly get Socoures of other Lands, were rulid under such a Lawe, and under such a Prince, it would be than a Pray to all other Nacions, that would conquere, robbe, and devour yt; which was well prouvyd in the tyme of the *Brytons*, whan the Scotts and the Pyctes so bette and oppressyd this Lond, that the People therof soughte helpe of the Romayns, to whom they had byn Trybutorye. And whan they could not be defendyd by them, they sought helpe of the Duke of *Brytayne*, then called *Litil Brytayne*, and graunted therfor, to make his brother *Constantine* their Kyng. And so he was made Kyng heere and raynyd many Yers, and his Children after hym, off which grete *Arthure* was one of their Issue. But blessed be God, this

* Scarcely.

Lond is ruled under a better Lawe, and therfor the People therof be not in such penurye, nor thereby hurt in their Persons, but thay be Weathye, and have all thyngs necessarye, to the sustenance of nature. Wherfor they be myghty, and able to resyst the Adversarijs of the Realme, and to bett other Realmes, that do or will do them wrong. Loo this is the Frute of *Jus Politicum et Regale*, under which we lyve. Sumwhat now I have schewyd you of the Frutys of both Lawys, Ut ex fructibus eorum cognoscatis eos, &c."

We might give other passages, and particularly Chapter X. but we conceive that we have already sufficiently established the statement in the text.

Comines gives the same description of the tyranny in other countries, particularly in France; and while his account of the military quartered on the inhabitants fully corresponds with that of Fortescue, in other respects he says—"Car ils ne se contentent point de la vie ordinaire, et de ce qu'ils trouvent chez le laboureur, dont ils sont payez; ains au contraire battent les pauvres gens et les outragent, et contraignent d'aller chercher pain, vin et vivres dehors: et si le bon homme a femme ou fille qui soit belle, il ne fera que sagement de la bien garder."

He represents the disgraceful plundering of the people by the prince; declares that it is tyranny to take the subject's money without his consent, by the act of the three estates, and pays this tribute of praise to England: "Or selon mon advis, entre toutes les seigneuries du monde, dont j'ay connoissance, ou la chose publique est mieux traitée, et ou regne moins de violence sur le peuple, et ou il n'y a nuls edifices abbatus, ny demolis pour guerre, c'est Angleterre; et tombe le sort et le malheur sur ceux qui font la guerre."

Memoires de Philippe de Comines, Ch. xviii. and xix.

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## Note B.

"To give the monopoly of the home market to the produce of domestic industry, in any particular art or manufacture," says Dr. Smith, "is in some measure to direct private people in what manner they ought to employ their capitals, and must in almost all cases be either a useless or a hurtful regulation. If the produce of domestic, can be brought there as cheap as that of foreign, industry, the regulation is evidently useless. If it cannot, it must generally be hurtful. It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. The tailor does not attempt to make his own shoes, but buys them of the shoemaker. The

shoemaker does not attempt to make clothes, but employs a tailor. The farmer attempts to make neither the one nor the other, but employs those different artificers. All of them find it for their interest to employ their whole industry in a way in which they have some advantage over their neighbours, and to purchase with a part of its produce, or, what is the same thing, with the price of a part of it, whatever else they have occasion for. What is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage. The general industry of the country being always in proportion to the capital which employs it, will not thereby be diminished, no more than that of the above-mentioned artificers; but only left to find out the way in which it can be employed with the greatest advantage. It is certainly not employed to the greatest advantage, when it is thus directed towards an object which it can buy cheaper than it can make. The value of its annual produce is certainly more or less diminished, when it is thus turned away from producing commodities evidently of more value than the commodity which it is directed to produce. According to the supposition, that commodity could be purchased from foreign countries cheaper than it can be made at home; it could, therefore, have been purchased with a part only of the commodities, or, what is the same thing, with a part only of the price of the commodities, which the industry employed by an equal capital would have produced at home, had it been left to follow its natural course. The industry of the country, therefore, is thus turned away from a more to a less advantageous employment; and the exchangeable value of its annual produce, instead of being increased, according to the intention of the lawgiver, must necessarily be diminished by every such regulation." Book iv. chap. ii.

This reasoning is at first sight plausible, and has been generally received as irrefragable; yet I flatter myself I shall have little difficulty in proving that it is altogether erroneous, and founded on a very narrow view of human affairs. The whole proceeds on the assumption, that the industry of the people may always be employed; and that there occurs nothing more between nations than the exchange of one manufacture for another, which certainly could not be injurious to nations, and is highly beneficial amongst individuals of the same society. But the true view is, that, as in all old countries the population is fully equal to the means of subsistence which the soil can produce, if we allow manufactures to be imported from a country which has the advantage in capital and manufacturing skill,

in exchange for the produce of the soil, we deprive a portion of the people of the means of life—of all sphere for the exertion of their industry. And in this place I must remark, that Dr. Smith appears often to look upon the capital of a nation as something definite, and which must find employment; whereas it is the result of skill and industry, properly protected, and may be accumulated indefinitely; and, by improper policy, be again exhausted.

To illustrate the point, let us take the case of a small proprietor, who, on his land, maintains his family and some of his kindred, whose support requires nearly the whole produce of the soil. It is quite clear, that every bushel saved to the family is in that case a gain; and that, as not above a third of them are needed for agricultural operations, it is of the last importance that part of them should be employed in spinning, weaving, mantua-making, &c. that one should perform the part of a tailor, another of a shoemaker, and so on: For in this way the produce of the soil, which is all required at home, is saved amongst themselves, since all the articles of home manufacture could only be procured elsewhere by giving away in exchange the produce of the land. Now, suppose that the head of the family, with those directly employed in agriculture, should act on the principle of purchasing at the cheapest market, it is demonstrable that, as the coarse manufactures of home production could never compete with articles furnished under all the advantages of skill, capital, and machinery, these foreign productions would entirely supersede the old, and thus throw two-thirds of the family out of employment. The new articles, however, could only be purchased by exchanging for them the produce of the soil, and as, to procure them, as few hands would be employed in agriculture as possible, there would no more raw produce be retained than was barely sufficient for the support of those who were necessary for conducting the farming operations. The other two-thirds of the population must, consequently, either emigrate, or perish of want. When, therefore, the Doctor talks of the injury done to a nation by forcing it to buy the produce of domestic industry, while it can procure that of foreign countries cheaper, he overlooks that, if it be a loss to one portion of the society to pay higher for the articles than they could procure them at from abroad, it is a gain to the rest. What is apt to mislead one in considering a simple case of this kind, is, that, in a state, those who are so discarded from one department find employment in another. But this could not hold in regard to the intercourse between nations. Let us, however, before considering the case of a nation, take an example of an inland town, and suppose that all its adjacent land-owners,

and those employed in agriculture, draw their manufactures from it in return for the produce of the soil; that the town thrives—the surplus population of the country always finds employment there—capital is accumulated—skill is acquired—and as the profits of stock in different departments must be nearly equal, the agriculturists who can provide in the town for such of their families as they do not need in the country, also accumulate capital, and agriculture proceeds with the improvement observable in other branches of skill and industry; that, however, a new canal suddenly opens a communication between large towns, as Manchester and the like, which are ready to sweep off the produce of the soil in exchange for their superior fabrics,—is it not equivalent to demonstration itself, that the whole manufactures of this country town would be instantly ruined? and that, as has happened in all the present agricultural districts, the town would dwindle into insignificance? What, then, would become of that portion of the inhabitants that had previously acquired independence, and even opulence, in the town? They must either migrate to another quarter, or starve. But though they might migrate from one district of the same state to another, they could not with the same facility leave the country altogether; and miserable, indeed, would be the nation, where more than the half of the inhabitants found it necessary to forsake it. We shall now, therefore, consider what would be the condition of a whole nation.

Let us take the case of a fertile island of about a hundred miles square. That the population would be fully commensurate with the means of subsistence, no one who has studied the subject will deny; And as little above a third of the population can be required for agriculture, the rest can, in manufactures only, find employment; and with it an equivalent for the produce of the soil. Now, let us suppose that the island, even after having made considerable advances in wealth, opens a communication with Britain for a free and unlimited importation of manufactures in exchange for staples; and that the latter, with her skill and capital, is enabled to furnish every article of a superior fabric to what can be manufactured at home, while she allows a free importation of the grain and other produce of that island: Would not every loom in that island be thrown out of employment; and the same result occur in regard to the manufactures of Sheffield and Birmingham? Even Dr. Smith himself admits, that by "the free importation of manufactures, several of the home manufactures would probably suffer, and some of them perhaps go to ruin altogether;" but then he thinks that the stock and industry employed in them would find some other channel. He forgets, however,

that though this might hold where there is merely an interchange of manufactures, it never could happen where the raw produce of the soil in an old country is exported for the wrought goods: For, as the inhabitants at home are sufficiently numerous to consume the whole grain raised, there cannot be a bushel of it exported without lessening their means of subsistence. The land-owners and agriculturists, too, have only a certain proportion of the produce, or, what is the same thing, of the price which it brings, to exchange for manufactures; and they cannot both purchase foreign wrought goods with this spare produce, and yet supply the inhabitants at home by taking their accustomed quantity of manufactures in exchange. We may remark, too, that the capital of Britain would be so augmented by this vent for her goods, that, with all her advantages, she, in order to obtain the raw produce, would outrival the other isle in any new manufacture which it might attempt. The result would be, that none in the small island could find employment but those required for agriculture, and such as were necessary to manage the exchange between the land-owners with the agricultural classes and Britain, which, both together, could not occupy above a half of the whole inhabitants.

On a superficial view it may be inferred, that this would be at least beneficial to the landed portion of the community who thus purchased their goods at the cheapest market; but it will be found, on a little examination, that the system would be injurious to the interest even of that class, while all must admit, that, were it otherwise, it would yet be contrary to all sound policy, and the right of humanity, to serve them at the expense of ruin to the remainder of the inhabitants. As the redundant population (that is, the portion not required for agriculture) could not be otherwise employed, there would be a competition for land till the profits were reduced to the very lowest ebb; but as, without capital, which, under these circumstances, would soon be exhausted, agriculture cannot be conducted with success, the ground, unassisted with lime or any expensive manure, would be overcropt, till it could afford but a very diminished rent. A farmer, too, having no way to provide for his children in any other line, would be farther crippled by being obliged to retain at home those whom he did not need to assist him in his agricultural operations, and this would further diminish his ability to pay rent. The land-owners would themselves have no outlet for their families, and poor relations to a distant degree would necessarily hang upon them, begging farms as the only means of obtaining subsistence. Land, however, cannot be multiplied, and, therefore, farms could not be given to them, unless by the extrusion of some of those who al-

ready occupied the soil without having a claim of propinquity to advance, and who, therefore, must descend to the lowest class. But as these relations would, after having obtained such provisions, marry and have families, it is clear that their children could only be provided for, either by subdividing the farms, which could not go on far, or by extruding others through the favour of the land-owner.

The system of providing for the descendants of poor relations, however, could not, as at each step the propinquity would be lessened, be long continued; that of subdivision, therefore, must be resorted to, till part gradually descended into the rank of common labourers. In the meantime, nearer kindred require farms, and others must renounce their possessions. Thus, there would be a perpetual overflow from the high classes pressing upon those beneath, and gradually wasting away the lowest. And here we must remark, that Dr. Smith does not shew his usual perspicacity, when he argues that, though the situation of a stationary, or declining society, be attended with hardship to the labouring classes, the wages of labour must always be sufficient to support the labourers, since otherwise that useful class of men would wear out,—whence, we must conclude, that he conceived there is some interminable line between the higher and the lower ranks, similar to that betwixt the whites and blacks in the West Indies,—for, otherwise, he must have seen, that there is nothing to prevent the overflowings of the higher ranks from descending, as in such cases they must do, in the scale of life. To return to the condition of the higher ranks in the island we have supposed: The land-owner, with a poor kindred, ill-paid rents, and a beggared tenantry, would soon have small cause to congratulate himself on any advantages derived from foreign manufactures, while, as the island would not be possessed of resources against foreign enemies, he would have no security for his estate.

But this view of matters may be supposed imaginary rather than real. It is only necessary, however, to look to Poland, where such a system operates infinitely more than even an arbitrary government, in beggaring the people, to be convinced of the truth. Were the importation of manufactures into that country to be prohibited, they would necessarily be soon begun with spirit, since such as require them, would, when deprived of the superior fabrics of other countries, be obliged to purchase the home productions of industry, however coarse; nor would it impose any great hardship on them, even at the first, since every thing is comparative, and no man could be undervalued by his neighbours who had the best articles which could be procured. In a short time, skill would be acquired, capital

accumulated, and the bulk of the inhabitants provided with the means of procuring the necessaries of life, while rents would be wonderfully augmented. What occurred during the late American war? That precluded our market, a people altogether unacquainted with manufacturing, found it necessary to encourage it; and, in the course of two or three years, made a rapid progress in that department of industry. When the peace came, however, their wrought goods could not stand in competition with those of Britain, and a great part of their new artizans were obliged to strike work. This was, in America, attended with no evil, because there was abundance of new land for the people to resort to; but, had the States been fully inhabited to their means of subsistence, and the free importation of their grain been allowed into Britain, it could not have failed to have proved most ruinous. Had it not been for the corn laws, and restrictions in foreign countries on the importation of our manufactures, we should, in all probability, have, at the same time, ruined half the manufactures of Europe, while we carried off the produce of the soil from a beggared population, who, in the nature of things, must fully require it all for their own support.

I cannot leave this subject without acknowledging my obligations to the work of my late invaluable friend, Mr. Dawson, entitled, an Inquiry into the Causes of the Poverty of Nations. The work is replete with sound thinking; but, owing to the author's not having been early accustomed to composition, (he was about eighty when he published this book,) it has been, in a great measure, lost by the plainness of the style.

## NOTE C.

I have ascertained that, in the copy of Leslie's MS. in the British Museum, a copy, however, which is far from being perfect, the number alleged to have been executed for the northern rebellion is filled up at 800. But when the manuscripts,—of which the most perfect one, (one in the hand-writing of the bishop's amanuensis,) is in the Advocates' Library—are so discordant, we cannot depend on the number specified in figures of either; and, therefore, we must rely on Cambden, who had so many opportunities of knowledge, on this subject, equal at least to Leslie, and who extracted great part of his information as to negociations, from a copy of Leslie's manuscript. See Anderson's Introduction.

## NOTE D.

In page 246, I have, in a note, said that though I was not aware of Mr. Hume's authority, (he refers to none,) I was not prepared to contradict his statement in regard to the country being obliged to arm and clothe the troops which were raised, and transport them to the sea-ports at their own charge. But I conceive that I am now in a situation to contradict it, and contrast the alleged tyranny of Elizabeth's reign with that of Charles I., for whose sake the statement was made. In Mr. Pym's Speech on Grievances, on the 7th of November, 1640, there is the following passage, which none offered to contradict. "Military charges ought not to be laid upon the people by warrant of the king's hand; nor by letters of the council table; nor by order of the lords lieutenants of the counties, nor their deputies. *It began to be practised as a loan*, for supply of cost and conduct money, in Queen Elizabeth's time, *with promise to be repaid* as appears by a *consilat* warrant in the Exchequer, and certain payments, *but now-a-days never repaid*. The first particular, brought into a tax, was the muster-master's wages, which, being but for small sums, was generally digested; *yet, in the last parliament, it was designed to be remedied*: But *now there follows, 1st, Pressing of men against their wills, or to find others; 2dly, Provisions for public magazines of powder, spades, and pick-axes; 3dly, Salary of officers, cart-horses and carts, and such like.*" Parl. Hist. vol. ix. p. 66. Cobbett's do. vol. ii. p. 642.

Mr. Hume has, in note LL to volume V. given some extracts from the parliamentary journals preserved by Townshend and D'Ewes, but with what adroitness he has selected the most obnoxious passages, and stopt wherever the context gave a different character to the whole, we shall now prove. The subject regarded monopolies, when a bill was proposed by Mr. Lawrence Hyde in explanation of the common law. Bacon said, "For the prerogative royal of the prince, for my own part, I ever allowed of it; and it is such as I hope I shall never see discussed. The queen, as she is our sovereign, hath both an enlarging and restraining liberty of her prerogative; that is, she hath power, by her patents, to set at liberty things restrained by statute-law, or otherwise: And, by her prerogative, she may restrain things that are at liberty. For the *first*: She may grant *non obstantes*, contrary to the penal laws; which, truly, in my own conscience, are as hateful to the subject as monopolies."

The following, however, Hume omits. "For the *second*: *If any man*

*out of his own wit, industry, or endeavour, find out any thing beneficial for the commonwealth, or bring any new invention, which every subject of this realm may use;* yet, in regard of his pains, travel, and charge therein, her majesty is pleased (perhaps) to grant him a privilege to use the same only by himself, or his deputies, for a certain time: This is one kind of monopoly. Sometimes there is a glut of things, when they be in excessive quantities, as of corn; and perhaps her majesty gives license to one man of transportation: This is another kind of monopoly. Sometimes there is a scarcity or small quantity; and the like is granted also.

These, and divers of this nature, have been in tryal, both in the *Common Pleas* upon actions of trespass; where, if the judges do find the privilege good for the commonwealth, they will allow it, otherwise disallow it. And also I know that her majesty herself hath given command to her attorney-general to bring divers of them (since the last parliament,) to tryal in the Exchequer. Since which, fifteen or sixteen to my knowledge have been repealed: Some upon her majesty's own express command, upon complaint made unto her by petition; and some by *quo warranto* in the Exchequer. But, Mr. Speaker, (said he, pointing to the bill,) this is no stranger in this place; but a stranger in this vestment." Here, again, Hume begins his quotation. "The use hath been ever, by petition, to humble ourselves to her majesty, and by petition to desire to have our grievances redressed, especially when the remedy toucheth her so nigh in prerogative." Here, again, Hume stops. "All cannot be done at once; neither was it possible, since the last parliament, to repeal all. If her majesty makes a patent, or a monopoly to any of her servants; that we must go and cry out against: But if she grant it to a number of burgesses, or corporation, that must stand, and that, forsooth, is no monopoly." This is all omitted. But the following is not. "I say, and I say again, that we ought not to deal, or meddle with, or judge of, her majesty's prerogative. I wish every man therefore, to be careful in this point; and," mark the sequel, "humbly pray this house to testify with me that I have discharged my duty in respect of my place in speaking on her majesty's behalf; and do protest, I have delivered my conscience in saying what I have said."

Dr. Bennet said: "He that will go about to debate her majesty's prerogative royal, must walk warily. In respect of a grievance out of that city for which I serve, I think myself bound to speak that now which I had not intended to speak before; I mean a *monopoly of salt*. It is an old proverb, *sal sapit omnia*: Fire and water are not more necessary." But for other monopolies of cards, (at which word Sir

Walter Rawleigh blushed,) dice, starch, &c., they are, (because monopolies,) I must confess, very hateful, though not so hurtful. I know there is a great difference in them; and I think, if the abuse in this *monopoly of salt* were particularized, this would walk in the fore-rank.

"Now, seeing we are come to the means of redress, let us see it be so mannerly and handsomely handled, that, after a commitment, it may have good passage."

Mr. Lawrence Hyde said; "I confess, Mr. Speaker, that I owe duty to God and loyalty to my prince. And, for the bill itself, I made it, and I think I understand it: And far be it from this heart of mine to think, this tongue to speak, or this hand to write, any thing in prejudice or derogation of her majesty's prerogative royal, and the state." Here Hume prudently pauses. "But because ye shall know this course is no new invention, but long since digested in the days of our forefathers, above three hundred years ago; I will offer to your consideration one precedent in the 50th Ed. III. At which time, one John Peache was arraigned at this bar, for that he had obtained of the king a monopoly for sweet wines: The patent, after great advice and dispute, adjudged void; and before his face, in open parliament, cancell'd; because he had exacted three shillings and fourpence upon every tun of wine; himself adjudged to prison until he had made restitution of all that he ever had received, and not to be delivered till after a fine of L.500 paid to the king."

"Out of the spirit of humility, Mr. Speaker," says Mr. Francis Moore, "I do speak it, There is no act of hers that hath been, or is, more derogatory to her own majesty, or more odious to the subject, or more dangerous to the commonwealth, than the granting of these monopolies."

"Mr. Townshend of Lincoln's Inn, (the collector of this journal,) seeing the disagreement of the committees, and that they could agree upon nothing, made a motion to this effect: First, to put them in mind of a petition made the last parliament, which, though it took no effect, we should much wrong her majesty, and forget ourselves, if we should think to speed no better in the like case now; because there was a commitment for this purpose, and the committees drew a speech, which was delivered by the Speaker, word for word, at the end of the parliament. But now we might hope, that by the sending of our Speaker, presently after such a committee, and speech made, with humble suit, not only to repeal all monopolies grievous to the subject; but also, that it would please her majesty to give us leave to make an act, that they might be of no more force, validi-

ty, or effect, than they are at the common law, without the strength of her prerogative: which, though we might now do, and the act being so reasonable, we did assure ourselves her majesty would not deny the passing thereof; yet we, her majesty's loyal and loving subjects, would not offer, without her privity or consent, (the cause so nearly touching her prerogative,) or go about the doing of any such act. And also, that at the committee, which should make this speech, every member of this house, which either found himself, his town, or country grieved, might put in, in fair writing, such exceptions and monopolies as he would justify to be true. And that the Speaker might deliver them with his own hand, because many hindrances might happen."

Mr. Davies said: "God hath given power to absolute princes," which he attributeth to himself: *Dixi quod Dii estis.* In this instance the conduct is most reprehensible." Here Hume stops; and yet the sequel places the meaning in a different point of view; while another speech, by Davies, (who turned so great a sycophant afterwards, asserting the absolute authority of King James,) is of a very different description.—"And as attributes unto them, he hath given them majesty, justice, and mercy. *Majesty*, in respect of the honour that the subject sheweth unto his prince. *Justice*, in respect he can do no wrong; therefore the law is, 1 Hen. 7. that the king cannot commit a disseisin. *Mercy*, in respect he giveth leave to his subjects to right themselves by law. And therefore, in the 44th *Ass.* an indictment was brought against bakers and brewers; for that, *by colour of license*, they had broken the assize: Wherefore, according to that precedent, *I think it most fit to proceed by bill, and not by petition.*"

"This dispute," says Secretary Cecil, "draws two great things in question: *First*, the prince's power; *Secondly*, the freedom of Englishmen. I am born an Englishman, and a fellow member of this House. I would desire to live no day in which I should detract from either.

"I am servant to the Queen; and before I would speak, or give my consent to a case that should debase her prerogative, or abridge it, I would wish my tongue cut out of my head. I am sure there were law-makers before there were laws.

"One gentleman went about to possess us with the execution of the law in an ancient record of 50th Ed. III. likely enough to be true, in that time, when the king was afraid of the subject. Though this presence be a substance, yet it is not the whole substance of the parliament; for, in former times, all sate together, as well king as subjects. And then it was no prejudice to his prerogative to have such a monopoly ex-

amined. If you stand upon law, and dispute of the prerogative, hark what Bracton saith: *Prerogativam nostram nemo audeat disputare*, &c. For my own part, I like not these courses should be taken; and you, Mr. Speaker, should perform the charge her Majesty gave unto you at the beginning of this parliament, not to receive bills of this nature. For her Majesty's ears be open to all our grievances, and her hands stretched out to every man's petition."—This is detestable.

(The patent for bottles was lately made void by judgment in the Exchequer.)

Mr. Davies (the same gentleman whose particular words are caught at by Hume, without the context) "moved the house first: That he, for his part, thought the proceeding by bill to be most convenient; for the precedent in the 50th Edward III. warranteth the same. *And therefore let us do generously and bravely, like Parliament men; and ourselves send for them and their patents, and cancel them before their faces: Arraign them, as in times past, at the bar, and send them to the Tower; there to remain, until they have made a good fine to the Queen, and made some part of restitution to some of the poorest that have been oppressed by them*;—and withal laughed."

"Mr. Martin, after a long speech made touching these monopolies, thus concluded: "And therefore the gentleman that spake last, (Davies,) spake most honestly, learnedly, and stoutly. Yet thus much I must needs say, his zeal hath masked his reason; and that, I think, was the cause of his fervent motion, which, I desire, may be cooled with a petition in most dutiful manner," &c.

"I believe," says Secretary Cecil, "there never was in any parliament a more tender point handled than *the liberty of the subject, and the prerogative royal of the prince*. What an indignity, then, is it to the prince, and injury to the subject, that when any is discussing this point, he should be cryed and coughed down." (Does not this shew the temper of the house; and was it not likely himself was so lashed for his slavish speech?) "This is more fit for a grammar school than a parliament. I have been a counsellor of state these twelve years; yet never did I know it subject to construction of levity or disorder: much more ought we to be in so great and grave an assembly. Why? we have had speeches, and speech upon speech, without either order or discretion. "One would have had us to proceed by bill, and see if the Queen would have denied it. Another, that the patents should be brought here before us, and cancelled; and this were bravely done. Others

would have us to proceed by way of petition, which, of both, doubtless is best.

"But for the first, (and especially for the second,) it is so ridiculous, that I think we should have had as bad success as the devil himself would have wished in so good a cause. Why? if idle courses had been followed, we should have gone (forsooth) to the Queen with a petition to have repealed a patent or monopoly of tobacco-pipes, (which Mr. Wingfield's note had,) and I know not how many conceits. But I wish every man to rest satisfied, until the committees have brought in their resolutions according to your commandments."

The speaker, only three days after this debate, received a message to deliver to the house, which was followed up by Cecil, announcing the repeal of those monopolies. "She said that, partly by intimation of her council, and partly by divers petitions that have been delivered unto her, both going to chapel and also walking abroad, she understood that divers patents that she had granted were grievous unto her subjects, and that the substitutes of the patentees had used great oppression. But she said she never assented to grant any thing that was *malum in se*.—I cannot express unto you the apparent indignation of her majesty towards these abuses." She assured them of a reformation, and imputed its not having been done to Essex's rebellion.—That now it should be done: "that some should presently be repealed, some suspended, and not put in execution; *but such as should first have a trial according to the law for the good of her people.*

"Against the abuses her wrath was so incensed, that she said she neither would nor could suffer such to escape with impunity."

Cecil said, "There are no patents now of force which shall not presently be revoked; for what patent soever is granted, there shall be left to the overthrow of that patent a liberty agreeable to the law. There is no patent but if it be *malum in se*, the Queen was ill apprised in her grant; but all to the generality are unacceptable. I take it there is no patent whereof the execution thereof hath been injurious; would that had never been granted. I hope there shall never be more." (All the house said *Amen*.)

On another occasion, a day or two after, but relative to the message, Mr. Secretary Cecil said, "If I should tell you otherwise than truth in a matter of so great consequence, I should need no other process than my own conscience. That to so gracious a message, there were never returned more infinite thanks, we all are assured. From the queen I have received a short answer in these words: *You*

*can give me no more thanks for that which I have promised you, than I can and will give you thanks for that which you have already performed,* (meaning the subsidies and fifteens.) So inseparably are the qualities of the prince and the subject good for the one and the other."

"There were some other topics," says Mr. Hume, in favour of prerogative, still more extravagant, advanced in the house this parliament. When the question of the subsidy was before them, Mr. Serjeant Heyle said: "Mr. Speaker, I marvel much that the house should stand upon granting a subsidy or the time of payment, when all we have is her majesty's, and she may lawfully, at her pleasure, take it from us: Yea, she hath as much right to all our lands and goods as to any revenue of the crown." At which all the house hemmed, and laughed, and talked. "Well, quoth Serjeant Heyle, all your hemming shall not put me out of countenance," (this man was qualified with a vengeance to browbeat a witness.) "So Mr. Speaker stood up, and said, it is a great disorder, that this house should be so used." Mr Hume should have added, "for it is the ancient use of every man to be silent when any one speaketh; and he that is speaking should be suffered to deliver his mind without interruption.' "So the said serjeant proceeded, and when he had spoken a little while, the house hemmed again, and so he sat down. In his latter speech, he said he could prove his former position by precedents in the time of Henry III. King John, King Stephen &c. which was the occasion of their hemming. It is observable that Heyle was an eminent lawyer, and a man of character; and though the house, in general, shewed their disapprobation, no one cared to take him down, or oppose those monstrous positions." How differently the same thing strikes different men. When I met with this in the journals by D'Ewes and Townshend, I conceived that it was degrading to the house for any member to make a remark on what had so excited the utter contempt of the whole house, that the speaker's interposition could not procure the serjeant a hearing. But when I read Mr. Hume's note, I changed my opinion; and was glad to find the serjeant taken down in the following manner: "*Mr. Montague of the Middle Temple said, that there were no such precedents; and if all the preambles of subsidies were looked upon, he should find it was of free gift. And although her majesty requireth this at our hands, yet it is in us to give, not in her to exact, of duty.*" D'Ewes, p. 633. Townshend, p. 205. Now, as the one follows the other immediately, I would ask, was it possible for Hume to overlook it? But Heyle was a great lawyer: He made a poor figure with it. Nay, but he was a man of character! I would desire no better proof of the contrary than that

slavish conduct which excited such scorn in the assembly to whom it was addressed.

"It was asserted this session," says Hume, "that, in the same manner as the Roman consul was possessed of the power of rejecting or admitting motions in the senate, the speaker might either admit or reject bills. The house declared themselves against this opinion; but the very proposal of it is a proof at what a low ebb liberty was at that time in England." Now let us take the journals from which Hume derives his information.

"Then the questions upon the continuance of statutes were offered to be read, but the house called for the bill of ordnance; yet the clerk fell to read the questions, but the house still cried upon ordnance. At length, Mr. Carey stood up, and said, In the Roman senate the consul always appointed what should be read, what not; so may our speaker, whose place is a consul's place: *If he err, or do not his duty, fitting to his place, we may remove him. And there have been precedents.* But to appoint what business shall be handled, in my opinion we cannot: AT WHICH SPEECH SOME HISSED. Mr. Wiseman said, I reverence Mr. Speaker in his place, but I take great difference between the old Roman consuls and him. Ours is a municipal government, and we know our grievances better than Mr. Speaker; and, therefore fit every man, *alternis vicibus*, should have those acts called for he conceives most necessary. All said, ay, ay, ay." Does this convey what Mr. Hume imputes to it? D'Ewes, p. 677. The rest of Mr. Hume's note has already been commented on by us. He unfortunately was unacquainted with law, and misled by its language. But, as he ever dwells on proclamations, alleging that, in the reigns of even James and Charles, nobody doubted that they might be issued with the effect of laws, we shall give the following from Coke's reports.

"*The case of Proclamations, Mich. VIII. James I. A. D.* 1610. (12 *Coke's Reports*, 74.)

"Memorandum, that, upon Thursday, 20th September, Regis Jacobi, I was sent for to attend the Lord Chancellor, Lord Treasurer, Lord Privy Seal, and the Chancellor of the Duchy, there being present the attorney, the solicitor, and recorder: and two questions were moved to me by the Lord Treasurer; the one, if the king by his proclamation may prohibit new buildings in and about London, &c. the other, if the king may prohibit the making of starch of wheat; and the Lord

Treasurer said, that these were preferred to the king as grievances, and against the law and justice: and the king hath answered, that he will confer with his privy council, and his judges, and then he will do right to them. To which I answered that these questions were of great importance. 2. That they concerned the answer of the king to the body, viz. to the commons of the house of parliament. 3. That I did not hear of these questions till this morning at nine of the clock; for the grievances were preferred, and the answer made when I was in my circuit. And, lastly, both the proclamations which now were shewed, were promulgated, anno 5. Jac. after my time of attorney-ship; and for these reasons, I did humbly desire them that I might have conference with my brethren the judges about the answer of the king, and then to make an advised answer according to law and reason. To which the Lord Chancellor said, that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the king; and in cases in which there is no authority and precedent, to leave it to the king to order in it according to his wisdom, and for the good of his subjects, or otherwise the king would be no more than the Duke of Venice; and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken: and the Lord Privy Seal said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease: and all concluded, that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement.

To which I answered, that true it is that every precedent hath a commencement; but when authority and precedent is wanting, there is need of great consideration, before that any thing of novelty shall be established, and to provide that this be not against the law of the land: for I said, that the king cannot change any part of the common law, nor create any offence by his proclamation which was not an offence before, without Parliament. But at this time, I only desired to have a time of consideration and conference with my brothers, for, "deliberandum est diu quod statuendum est semel;" to which the solicitor said, that divers sentences were given in the star-chamber upon the proclamation against building: and that I myself had given sentence in divers cases, for the said proclamation: to which I answered, that precedents were to be seen, and consideration to be had of this upon conference with my brethren, for that "melius est recurrere, quam male currere;" and that indictments conclude, "contra leges et

statuta," but I never heard an indictment to conclude, "contra regiam proclamationem." At last, my motion was allowed, and the lords appointed the two Chief Justices, Chief Baron, and Lord Altham, to have consideration of it.

Note, the king, by his proclamation or otherwise, cannot change any part of the common law, or statute law, or the customs of the realm, 11th Henry IV. c. 37. Fortescue, De Laudibus Angliæ Legum, cap. 9. 18th Ed. IV. c. 35, 36, &c. 31st Henry VIII. cap. 8. hic infra. Also the king cannot create any offence by his prohibition or proclamation which was not an offence before, for that was to change the law, and to make an offence which was not; for, "ubi non est lex, ibi non est transgressio;" *ergo*, that which cannot be punished without proclamation, cannot be punished with it. *Vide* le stat. 31st Henry VIII. cap. 8. which act gives more power to the king than he had before; and yet there it is declared, that proclamations shall not alter the law, statutes, or customs of the realm, or impeach any in his inheritance, goods, body, life, &c. But if a man should be indicted for a contempt against a proclamation, he shall be fined and imprisoned, and so impeached in his body and goods. *Vide* Fortescue, cap. 9. 18. 34. 36, 37, &c.

But a thing which is punishable by the law, by fine, and imprisonment, if the king prohibit it by his proclamations before that he will punish it, and so warn his subjects of the peril of it, then if he commit it after this, as a circumstance, aggravates the offence; but he by proclamation cannot make a thing unlawful which was permitted by the law before; and this was well proved by the ancient and continual forms of indictments, for all indictments conclude, "contra legem et consuetudinem Angliæ," or "contra leges et statuta," &c. But never was seen any indictment to conclude, "contra regiam proclamationem."

So in all cases the king, out of his providence, and to prevent dangers which it will be too late to prevent afterwards, he may prohibit them before, which will aggravate the offence if it be afterwards committed; and as it is a grand prerogative of the king to make proclamation, for no subject can make it without authority from the king, or lawful custom, upon pain of fine and imprisonment, as it is held in the 22d Henry VIII. procl. B. But we do find divers precedents of proclamations which are utterly against law and reason, and for that void; for, "quæ contra rationem juris introducta sunt, non debent trahi in consequentiam."

An act was made, by which foreigners were licensed to merchandize within London; Henry IV. by proclamation prohibited the exe-

cution of it; and that it should be in suspense, "usque ad proximum parliamentum?" which was against law. Vide dors. claus. 8th Henry IV. Proclamation in London. But 9th Henry IV. an act of parliament was made, that all the Irish people should depart the realm, and go into Ireland before the feast of the nativity of the blessed Lady, upon pain of death, which was absolutely *in terrorem*, and was utterly against the law.

Hollinshed, p. 722, A. D. 1546, 37th Henry VIII. the whore-houses, called the stews, were suppressed by proclamation and the sound of trumpet, &c.

In the same term it was resolved by the two chief justices, chief baron, and Lord Altham, upon conference betwixt the lords of the privy council and them, that the king, by his proclamation, cannot create any offence which was not an offence before, for then he may alter the law of the land by his proclamation in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment: Also the law of England is divided into three parts, common law, statute law, and custom; but the king's proclamation is none of them; also "malum aut est malum in se aut prohibitum," that which is against the common law is "malum in se;" "malum prohibitum," is such an offence as is prohibited by act of parliament and not by proclamation. Also it was resolved that the king hath no prerogative, but that which the law of the land allows him.

But the king, for prevention of offences, may, by proclamation, admonish his subjects that they keep the laws, and do not offend them, upon punishment to be inflicted by the law, &c.

Lastly, if the offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it punishable there; and after this resolution no proclamation imposing fine and imprisonment was afterwards made, &c.

We intended to have given quotations from Gilby, Goodman of Obedience, England's Complaint against the Canons, Cartwright, &c. Luther, lib. contra Rusticos, apud Sleidan. c. 5. Lib. de Bello contra Turcas, apud Sleid. c. 14. Zuinglius, tom. i. articul. 42. Calvin on Daniel, c. iv.; c. v. p. 28.; c. vi. 22. Bucer on Matth. c. v. Paræus in Rom. xiii. Knox, &c. &c.: But I conceive it to be unnecessary to swell out this farther; and I request the reader to look into Milton's Prose Works, Tenure of Kings and Magistrates, for the quotations, which, on examination, he will find to be correct.

We have already spoken of the practice of kneeling, and the dis-

tance preserved between ranks, and members of the same family, in ancient times. But I forgot to say, that Walpole, in his translation of Hentzner's Travels, has said,—in a note on a passage describing Queen Elizabeth's retiring from church, and every one in the line formed by the attendants, kneeling as she turned her eyes that way,—that the practice was dispensed with by James, and referred to Bacon's State Papers. But I do not know what part of that philosopher's works Mr. Walpole alluded to under this title, and I can find no passage authorizing the statement. That the practice was continued is indisputable. See our fourth volume, in addition to our note at the foot of the page to which this has reference.

I have already, from Henry, given an account of the state preserved by the famous Duke of Sully: The following passage, however, taken from the Supplement to his Memoirs, is more to be relied on, and so singular, that I cannot refrain from giving it.

"Il y employoit le matinée entière, excepté que quelquefois il sortoit pour prendre l'air, une demi-heure ou une heure avant le dîner. Alors on sonnoit une grosse cloche, qui étoit sur le pont, pour avertir de sa sortie. La plus grande partie de sa maison se rendoit à son appartement, et se mettoit en haie, depuis le bas de l'escalier. Ses écuyers, gentilshommes, et officiers marchoient devant lui précédés de deux Suisses, avec leur hallebarde. Il avoit à ses côtés quelques uns de sa famille, ou de ses amis, avec lesquels il s'entretenoit: suivoient ses officiers aux gardes et sa garde Suisse; la marche étoit toujours fermée par quatre Suisses.

Rentré dans sa salle à manger, qui étoit un vaste appartement, où il avoit fait peindre le plus mémorables actions de sa vie, jointe à celle de Henri-le-Grand, il se mettoit à table. Cette table etoit comme une longue table de réfectoire, au bout de laquelle il n'y avoit de fauteuils que pour lui et pour la Duchesse de Sully; tous ses enfans, mariés ou non mariés, quelque rang ou naissance qu'ils eussent, et jusqu' à la princesse de Rohan, sa fille, n'avoient que des tabourets, ou des sieges plians: car, dans ce temps-la, la subordination des enfans aux peres etoit encore si grande, qu'ils ne s'asseyoient et ne se couvroient en jamais leur presence, qu'apres en avoir reçu l'ordre. Sa table étoit servi avec goût et magnificence. Il n'y admettoit que les seigneurs et dames de son voisinage, quelques-uns de ses principaux gentilshommes, et des dames et filles d'honneur de la Duchesse de Sully; excepté la compagnie extraordinaire, tous se levoient et sortoient au fruit. Le repas fini, on se rendoit dans un cabinet joignant la salle à manger, qu'on nommoit le *Cabinet des illustres*, parce qu'il étoit orné des portraits de papes, rois, princes et autres personnages distingués ou célèbres, qu'il

tenoit d'eux mêmes. On en voit encore aujourd'hui la plus grand partie à Villebon.

Dans une autre salle à manger, belle et richement meublée, le capitaine des gardes tenoit une seconde table, servie à peu près comme la première, où toute la jeunesse alloit manger, et où ne mangeoient effectivement que ceux que la seule disproportion d'age empechoit le Duc de Sully de recevoir à la sienne. M. le Duc de Sully d'aujourd-hui à connu plusieurs personnes de qualité, qui lui ont dit que dans les visites qu'ils se souvenoient d'avoir faites, étant fort jeunes, chez le Duc le Sully, avec leurs pères, il ne retenoit que ceux-ci pour manger à sa table, et qu'il disoit ordinairement aux jeunes gens: *Vous êtes trop jeunes pour que nous mangions ensemble, et nous nous ennuierions les uns les autres.*" Supplement, tom. v. p. 356.

END OF VOLUME FIRST.

## ERRATA.

Page 8. line 4. *for* Edward III. *read* Edward II.
33. note, *for* Lerouia *read* Segouia.
85. note, *for* neighbour *neighbour*, *read* neighbour *nations*.
119. note, line 10. *for* so *was* its authors, *read* so *were*.
279. line 9. from foot, *for* the year 1632 *read* 1532.
there is also an error in p. 264, note, of 1793 *for* 1593.
384. note, line 6. *for not* even life, *read nor*.
404. note, line 2. for *evangellats* read *evangel*.
415. note, line 4. *for* did do, *read* did *not* do.

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